*Health Insurance Act 1973*

as in force on 1 July 2019

The following text is an excerpt of the Health Insurance Act 1973 with the amended sections, and sections relevant to the Shared Debt Recovery Scheme as they will appear in the legislation on 1 July 2019, when they come in to force.

129AAD Notice to produce documents

When section applies

(1) This section applies if the Chief Executive Medicare (the ***CEO***):

(a) has a reasonable concern that an amount paid, purportedly by way of benefit or payment under this Act, in respect of one or more professional services, may exceed the amount (if any) that should have been paid; and

(b) has taken into account advice given to him or her by a medical practitioner who is a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) about the types of documents that contain information relevant to ascertaining whether amounts paid in respect of professional services of the same kind or kinds as the service or services referred to in paragraph (a) should have been paid; and

(c) has taken reasonable steps to consult with a relevant professional body about the types of documents that contain information relevant to ascertaining whether amounts paid in respect of professional services of the same kind or kinds as the service or services referred to in paragraph (a) should have been paid.

Note: For the purposes of paragraph (a), the CEO may, for example, have a reasonable concern about benefits or payments made in respect of:

(a) professional services rendered by individual practitioners; or

(b) professional services rendered by particular kinds of practitioners; or

(c) the rendering of services to which specific items, or groups of items, relate.

CEO may require person to produce document etc.

(2) If the CEO believes on reasonable grounds that:

(a) a person:

(i) who rendered a professional service in respect of which an amount has been paid that is the subject of the CEO’s concern; or

(ii) on whose behalf such a professional service was rendered; or

(b) subject to subsection (7), another person;

has possession, custody or control of one or more documents relevant to ascertaining whether the amount paid in respect of the professional service should have been paid, or whether a determination under subsection 129ACA(2) should be made, the CEO may, by written notice given to the person, require the person to do any or all of the things mentioned in subsection (5) of this section.

(3) The CEO may give a notice to a person under subsection (2) in respect of a professional service only if the CEO has given the person a reasonable opportunity to respond to a written request to produce to the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), documents relevant to either or both of the following:

(a) ascertaining whether the amount paid, purportedly by way of benefit or payment under this Act, in respect of the service, should have been paid;

(b) whether the CEO should make a determination under subsection 129ACA(2) in relation to the amount paid, purportedly by way of benefit or payment under this Act, in respect of the service.

(4) A notice may only be given in respect of a professional service for which a claim for an amount to be paid under this Act in respect of the service was made during the period mentioned in subsection (4A).

(4A) The period is 2 years immediately before the day a written request under subsection (3) was first given to the person in relation to one or more professional services specified in the notice.

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

(a) subject to subsection (6), to produce to the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), any document, or extract of any document, that is relevant for a purpose set out in subsection (2); or

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

Note: For a person referred to in paragraph (2)(a), failure to comply with a notice may lead to recovery action (see sections129AC and 129ACA) and an administrative penalty may be applied (see sections 129AEA, 129AEB and 129AEC). For a person referred to in paragraph (2)(b), failure to comply with a notice may lead to a civil penalty (see section 129AAE).

(6) If a document, extract or copy contains clinical details relating to an individual, the person to whom the notice is given is not required to produce the document, extract or copy to a person other than a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) who is a medical practitioner.

CEO not to give notice to certain persons

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

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

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

Content of notice

(8) The notice must:

(a) specify details of each professional service (including the item, date on which the service was rendered and medicare number of the person in respect of whom the service was rendered) in relation to which the document, extract or copy is to be produced; and

(b) specify the reason or reasons for the CEO’s concern that an amount paid, purportedly by way of benefit or payment under this Act, in respect of each such service may exceed the amount (if any) that should have been paid; and

(ba) specify the circumstances in which a determination may be made under subsection 129ACA(2) in relation to an amount; and

(bb) contain a statement that the person may provide a written response to the CEO which states:

(i) if the person considers a determination under subsection 129ACA(2) should, or should not, be made and the person’s reasons for this; and

(ii) the percentage that the person considers should be determined for the purposes of paragraph 129ACA(3)(b); and

(bc) specify any matter, or contain any statement, prescribed by the Minister under paragraph 129ACA(9)(d); and

(c) specify the information relevant to ascertaining whether amounts paid in respect of each such service should have been paid; and

(d) specify how the document, extract or copy is to be produced; and

(e) contain a statement to the effect that the person to whom the notice is given is not expected to produce a document, extract or copy containing clinical details relating to an individual unless the document, extract or copy is necessary to ascertaining whether the amount paid in respect of the service should have been paid; and

(f) specify the period within which, and place at which, the document, extract or copy is to be produced.

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

Note: For the purpose of paragraphs (8)(b) and (c) the notice will include the reason for the CEO’s concern about the payment and explain the factual issue that the person is required to substantiate.

Health information

(9) 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.

(9A) If requested to do so under subsection (3), a person is authorised to produce any document relevant to the request, including a document containing health information (within the meaning of the *Privacy Act 1988*) about an individual.

Clinical relevance of particular professional service not to be taken into account

(10) In forming a reasonable concern for the purposes of subsection (1), the CEO is not to take into account the clinical relevance of a particular professional service.

Giving notices to State and Territory Health Departments

(10A) If:

(a) either of the following is given to a person in relation to a professional service rendered by the person:

(i) a notice under subsection (2);

(ii) a written request mentioned in subsection (3); and

(b) the professional service was rendered, or purportedly rendered, in a hospital mentioned in subsection (10B) of a State or Territory;

then, a copy of the notice or request may be given to the head (however described) of the Health Department (within the meaning of the *National Health Reform Act 2011*) of that State or Territory.

(10B) For the purposes of subsection (10A), a hospital is a facility in that State or Territory for which:

(a) a declaration is in force under paragraph 121‑5(6)(a) of the *Private Health Insurance Act 2007*; and

(b) a statement is included in the declaration (as mentioned in subsection 121-5(8) of that Act) that the hospital is a public hospital.

Section not limited

(11) This section is not limited by:

(a) any other provision of this Act; or

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

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

Definition

(12) In this section:

***relevant professional body*** means a body declared by the Minister under subsection (13) to be a relevant professional body.

(13) The Minister may, by legislative instrument, declare a body to be a relevant professional body for the purposes of this section.

129AADA Requirement to keep documents relating to notice to produce

(1) If the Chief Executive Medicare (the ***CEO***) gives a person a notice under subsection 129AAD(2), or a request mentioned in subsection 129AAD(3), in respect of a professional service, the person must keep, for the period mentioned in subsection (2) of this section, any document that is relevant to whether an amount should have been paid under this Act in respect of the service.

Civil penalty:

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

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

(2) The period:

(a) begins on the day the notice or request (as the case may be) is given; and

(b) ends:

(i) if a notice is given under subsection 129AAH(1) that the amount paid, by way of benefit or payment under this Act in respect of the service, should have been paid—on the day the notice is given; or

(ii) if a notice is given as mentioned in subsection 129AAI(4) or 129ACA(5) claiming an amount as a debt in respect of the service—on the day the notice is given.

(3) However, if an application for review of the decision to claim the amount as a debt is made under subsection 129AAJ(1) or 129ACB(1), the period ends on the day a notice is given under subsection 129AAJ(5) 129ACB(6) notifying the person of the outcome of the review.

(4) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A person who wishes to rely on subsection (4) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection (see section 130H).

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

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

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

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

Civil penalty:

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

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

(2) It is a defence in proceedings for a contravention of subsection (1) if:

(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

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

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

129AAF Self‑incrimination etc.

(1) A person is not excused from producing a document, extract or copy when required to do so under section 129AAD on the ground that doing so would tend to incriminate the person or expose the person to a penalty.

(2) However, the production of the document, extract or copy, and any information obtained as a direct or indirect result of the production of the document, extract or copy, are not admissible in evidence against the person in:

(a) any criminal proceedings, other than:

(i) proceedings for an offence against this Act dealing with false or misleading information or documents; and

(ii) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to this Act; or

(b) any civil proceedings, other than a civil proceeding arising under Part VIA or this Part.

129AAG Chief Executive Medicare or Departmental employee may deal with documents etc. produced

(1) If a document, extract or copy has been produced under section 129AAD in respect of a professional service, the Chief Executive Medicare, (the ***CEO***) or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), may do all or any of the things mentioned in subsection (2) for the purpose of ascertaining whether the information contained in the document, extract or copy properly substantiates that an amount paid, purportedly by way of benefit or payment under this Act, in respect of the service, should have been paid.

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

(2) The CEO or employee may:

(a) inspect the document, extract or copy; and

(b) make a copy of, or take an extract from, the document, extract or copy; and

(c) retain the document, extract or copy in his or her possession for such reasonable period as he or she thinks fit.

(3) The person otherwise entitled to possession of the document or extract is entitled to be supplied, as soon as practicable, with a copy certified by the CEO, or an employee, to be a true copy.

(4) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

(5) Until a certified copy is supplied, the CEO, or an employee, must, at such times and places as he or she thinks appropriate, permit the person otherwise entitled to possession of the document or extract, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document or extract.

(6) This section is not limited by:

(a) any other provision of this Act; or

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

that relates to the powers of the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), to deal with a document, extract or copy as described in subsection (2) of this section.

(7) A Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) referred to in this section may be an employee other than the employee to whom the document, extract or copy was required to be produced.

129AAH Notice of decision: no amount recoverable because amounts paid substantiated etc.

Amount paid substantiated

(1) If:

(a) a person produces to the Chief Executive Medicare (the ***CEO***), or to a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), a document, extract or copy relating to a professional service after being requested, or required under section 129AAD, to do so; and

(b) the CEO decides that the information contained in the document, extract or copy properly substantiates that the amount paid, by way of benefit or payment under this Act, in respect of the service, should have been paid;

the CEO must give the person written notice of the decision.

Circumstances beyond control exist

(2) If the CEO is satisfied, for the purposes of subsection 129AC(1B) or (1D), that circumstances beyond a person’s control exist, the CEO must give the person written notice of the decision.

(3) If the CEO is satisfied, for the purposes of subsection 129AC(1F), that circumstances exist beyond the control of:

(a) the person from whom the amount concerned is recoverable; and

(b) the recipient of the notice concerned;

the CEO must give written notice of the decision to the person from whom the amount concerned is recoverable.

Notice may include notice of other decisions

(4) The CEO’s written notice to a person of a decision may include written notice of other decisions referred to in this section, or section 129AAI, that also are required to be given to the person.

Giving notices to State and Territory Health Departments

(5) If:

(a) any of the following is given to a person in relation to a professional service rendered by the person:

(i) a notice under subsection (1);

(ii) a notice under subsection (2);

(iii) a notice under subsection (3); and

(b) the professional service was rendered, or purportedly rendered, in a hospital mentioned in subsection (6) of a State or Territory;

then, a copy of the notice may be given to the head (however described) of the Health Department (within the meaning of the *National Health Reform Act 2011*) of that State or Territory.

(6) For the purposes of subsection (5), a hospital is a facility in that State or Territory for which:

(a) a declaration is in force under paragraph 121‑5(6)(a) of the *Private Health Insurance Act 2007*; and

(b) a statement is included in the declaration (as mentioned in subsection 121-5(8) of that Act) that the hospital is a public hospital.

129AAI Notice of decision: amounts recoverable

(1) If an amount is recoverable under subsection 129AC(1), (1A), (1C) or (1E) as a debt due to the Commonwealth from a person, or from an estate, the Chief Executive Medicare (the ***CEO***) must give written notice to the person or estate of:

(a) the decision to claim the amount as a debt; and

(b) the reasons for the decision; and

(c) any right of the person or estate to seek review of the decision under subsection 129AAJ(1).

(1A) To avoid doubt, subsection (1) does not apply to an amount if subsection 129ACA(1) applies to the amount.

(2) The CEO’s written notice to a person or an estate of a decision may include written notice of other decisions referred to in this section, or section 129AAH, that also are required to be given to the person or estate. The written notice may also, as appropriate, state that the CEO was not satisfied, for the purposes of subsection 129AC(1B), (1D) or (1F), that circumstances beyond a person’s control existed.

(3) A failure to comply with the requirements of subsection (1) does not affect the validity of the decision.

(4) The CEO must not serve a notice on a person or an estate claiming an amount as a debt before the end of the period of 28 days after written notice of the decision referred to in subsection (1) is given to the person or estate.

(5) Subsection (4) does not apply in relation to claiming an amount as a debt if the person or estate has notified the CEO as mentioned in subsection 129AAJ(1A) in relation to the debt.

(6) If:

(a) any of the following is given to a person in relation to a professional service rendered by the person:

(i) notice under subsection (1);

(ii) a notice mentioned in subsection (4); and

(b) the professional service was rendered, or purportedly rendered, in a hospital mentioned in subsection (7) of a State or Territory;

then, a copy of the notice may be given to the head (however described) of the Health Department (within the meaning of the *National Health Reform Act 2011*) of that State or Territory.

(7) For the purposes of subsection (6), a hospital is a facility in that State or Territory for which:

(a) a declaration is in force under paragraph 121‑5(6)(a) of the *Private Health Insurance Act 2007*; and

(b) a statement is included in the declaration (as mentioned in subsection 121-5(8) of that Act) that the hospital is a public hospital.

129AAJ Review of decisions to claim amounts as debts

(1) If the Chief Executive Medicare (the ***CEO***) makes a decision referred to in subsection 129AAI(1) (other than a decision mentioned in subsection 129AAI(1A)) about a person or an estate, the person or estate may apply in writing to the CEO, in the form approved in writing by the CEO, for a review of the decision.

(1A) Subsection (1) does not apply if the person or estate has notified the CEO, in the form approved in writing by the CEO, that the person or estate waives the right to review of the decision to claim the amount as a debt.

(2) In making an application under subsection (1), the person or estate may provide the CEO with additional information to substantiate (wholly or partly) that the amount paid, purportedly by way of benefit or payment under this Act in respect of the service, should have been paid.

(3) An application for review of a decision must be made within 28 days after the person or estate is notified of the decision.

(4) On receiving an application for review of a decision, the CEO must:

(a) review the decision; and

(b) confirm, vary or revoke the decision.

(5) The CEO must give to the applicant written notice of the decision (the ***reconsidered decision***) on the review within 28 days after receiving the application for review.

(6) A failure to comply with the requirements of subsection (5) does not affect the validity of the review or of the reconsidered decision.

(7) An application may be made to the Administrative Appeals Tribunal for review of a reconsidered decision.

(8) However, subsection (7) applies only if a garnishee notice is given under subsection 129AEG(1) in relation to the debt to which the reconsidered decision relates.

(9) Despite paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975*, if a garnishee notice is given under subsection 129AEG(1) in relation to the debt to which the reconsidered decision relates, an application mentioned in subsection (7) of this section must be made within the period of 28 days after the day the garnishee notice is given.

(10) To avoid doubt:

(a) a decision to which subsection (1) applies may be reviewed by the CEO under subsection (4) once only; and

(b) a reconsidered decision takes effect:

(i) on the day specified in the reconsidered decision; or

(ii) if a day is not specified—on the day on which the reconsidered decision is made.

129AC Recovery of amounts overpaid etc. and administrative penalties

False or misleading statements

(1) Where, as a result of the making of a false or misleading statement, an amount paid, purportedly by way of benefit or payment under this Act, exceeds the amount (if any) that should have been paid, the amount of the excess is recoverable as a debt due to the Commonwealth from the person by or on behalf of whom the statement was made, or from the estate of that person, whether or not the amount was paid to that person, and whether or not any person has been convicted of an offence in relation to the making of the statement.

(1AA) Subsection (1) does not apply to an amount if subsection 129ACA(1) applies to the amount.

Failure to produce document

(1A) Subject to subsection (1B), if:

(a) a person referred to in paragraph 129AAD(2)(a) is required, by a notice given under section 129AAD, to produce a document, extract or copy in respect of a professional service; and

(b) the person does not comply with the requirement within the period set out in the notice;

the amount paid, purportedly by way of benefit or payment under this Act, in respect of the service, is recoverable as a debt due to the Commonwealth from the person, or the estate of the person, whether or not the amount was paid to the person.

(1B) Subsection (1A) does not apply if the person concerned satisfies the Chief Executive Medicare that the person’s non‑compliance is due to circumstances beyond the person’s control.

Note: See section 129AAJ for review of decisions.

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

(1C) Subject to subsection (1D), if:

(a) a person referred to in paragraph 129AAD(2)(a) is required, by a notice given under section 129AAD, to produce a document, extract or copy in respect of a professional service; and

(b) the person complies with the requirement within the period set out in the notice; and

(c) the information contained in the document, extract or copy does not properly substantiate (wholly or partly) that the amount paid, purportedly by way of benefit or payment under this Act, in respect of the service, should have been paid;

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

(1D) Subsection (1C) does not apply if the person concerned satisfies the Chief Executive Medicare that the reason that the information contained in the document, extract or copy does not properly substantiate the amount is due to circumstances beyond the person’s control.

Note: See section 129AAJ for review of decisions.

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

(1E) Subject to subsection (1F), if:

(a) a person (the ***notice recipient***) referred to in paragraph 129AAD(2)(b) is required, by a notice given under section 129AAD, to produce a document, extract or copy in respect of a professional service; and

(b) the notice recipient complies with the requirement within the period set out in the notice; and

(c) the information contained in the document, extract or copy does not properly substantiate (wholly or partly) that the amount paid, purportedly by way of benefit or payment under this Act, in respect of the service, should have been paid;

then, to the extent that the amount is not properly substantiated, the amount is recoverable as a debt due to the Commonwealth from:

(d) the person who rendered the service, or on whose behalf the service was rendered; or

(e) the estate of that person;

whether or not the amount was paid to that person.

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

Note: See section 129AAJ for review of decisions.

Administrative penalty

(1G) If:

(a) a person is given a notice under section 129AEC of the person’s liability to pay an administrative penalty; and

(b) the person does not pay the penalty by the day set out in the notice as the day by which the penalty becomes due for payment;

the amount set out in the notice is recoverable as a debt due to the Commonwealth from the person or the estate of the person.

Recovery once only

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

Interest on amounts

(2) Where:

(a) an amount (in this subsection referred to as the ***principal sum***) is recoverable as a debt due to the Commonwealth from a person, or from an estate, under subsection (1), (1A), (1C), (1E) or (1G); and

(b) the Chief Executive Medicare has served a notice on the person, or on the estate, as the case may be, claiming the amount as a debt due to the Commonwealth; and

(c) either of the following conditions are satisfied:

(i) an arrangement has been entered into between the Chief Executive Medicare and the person or the estate, as the case may be, within a period of 3 months following the service of the notice or such longer period as the Chief Executive Medicare allows (which period or longer period is in this section referred to as the ***relevant period***), being an arrangement for the repayment of the principal sum, and default has been made (whether before or after the end of the relevant period) in the payment of an amount as required by the arrangement; or

(ii) at the end of the relevant period, such an arrangement has not been entered into and all or part of the principal sum remains unpaid;

then, from the day after the end of the relevant period, interest at the prescribed rate becomes payable on so much of the principal sum as from time to time remains unpaid, and the interest so payable is recoverable as a debt due to the Commonwealth from the person, or from the estate, as the case may be.

(3) Notwithstanding subsection (2), in any proceedings instituted by the Commonwealth for the recovery of an amount due under subsection (2), the court may order that the interest payable under that subsection shall be, and shall be deemed to have been, so payable from a day later than the day referred to in that subsection.

129ACA Shared debt determinations

Making shared debt determinations

(1) If:

(a) as a result of the making of a false or misleading statement, an amount paid, purportedly by way of benefit or payment under this Act, exceeds the amount (if any) that should have been paid in respect of a professional service rendered, or purportedly rendered by a person; and

(b) the Chief Executive Medicare (the ***CEO***) makes a determination under subsection (2) in relation to the amount;

the excess (the ***recoverable amount***) is recoverable as a debt due to the Commonwealth from that person (or from the estate of that person) (the ***primary debtor***) and another person (or from the estate of that person) (the ***secondary debtor***) specified in the determination, or from the estates of those persons.

(2) The CEO may make a written determination under this subsection in relation to an amount if:

(a) notice has been given under subsection (7) in relation to the recoverable amount to the primary debtor and the secondary debtor; and

(b) any of the following apply:

(i) the secondary debtor employed or otherwise engaged the primary debtor to render professional services of the kind mentioned in paragraph (1)(a);

(ii) the secondary debtor had an arrangement or agreement with the primary debtor relating to professional services of that kind;

(iii) the secondary debtor is a person in a class of persons prescribed under paragraph (9)(a);

(iv) the secondary debtor is not a person in a class of persons prescribed under paragraph (9)(b); and

(c) the CEO reasonably believes the determination should be made having regard to the following:

(i) whether the relationship of the secondary debtor with the primary debtor was such that the secondary debtor could have controlled or influenced the circumstances that led to the making of the false or misleading statement to which the debt relates;

(ii) whether the secondary debtor directly or indirectly obtained a financial benefit from the making of the false or misleading statement;

(iii) whether any other factors in all the circumstances of the case make it fair and equitable for the determination to be made.

(3) The determination must be given to the primary debtor and the secondary debtor and set out the following:

(a) the decision to make a determination to claim the recoverable amount under subsection (1) as a debt due to the Commonwealth;

(b) an amount (the ***shared amount***) equal to a percentage of the recoverable amount that is recoverable from the secondary debtor;

(c) an amount (the ***remaining amount***) equal to the recoverable amount less the shared amount that is recoverable from the primary debtor;

(d) the reasons for the decision;

(e) the right to seek review of the decision under section 129ACB.

(4) The percentage determined by the CEO for the purposes of paragraph (3)(b) must be the percentage prescribed under paragraph (9)(c), unless the CEO reasonably believes in all the circumstances of the case that it is fair and equitable that a different percentage be determined.

(5) The CEO must not serve a notice on a person or an estate claiming a shared amount or remaining amount (as the case may be) as a debt before the end of the period of 28 days after the determination referred to in subsection (2) is given to the person or estate.

(6) An amount is recoverable under subsection (1) whether or not:

(a) the amount was paid to the primary debtor or secondary debtor (or the estates of those persons); and

(b) any person has been convicted of an offence in relation to the making of the statement.

Notice of intention to make shared debt determinations

(7) Before making a determination under subsection (2) in relation to a recoverable amount, the CEO must give the following to the primary debtor and the other person the CEO is considering specifying in the determination as the secondary debtor:

(a) written notice that the CEO is considering making a determination under that subsection in relation to the recoverable amount;

(b) a copy of any document produced under subsection 129AAD(2) or (3) in relation to the recoverable amount.

(8) The primary debtor or secondary debtor (or the estates of those persons) may, within 14 days after the notice under subsection (7) is given, provide a written response to the CEO which states:

(a) the reasons why the person considers a determination under subsection (2) should, or should not, be made; and

(b) the percentage that the person considers should be determined for the purposes of paragraph 129ACA(3)(b).

Minister may make legislative instrument

(9) The Minister may, by legislative instrument, prescribe the following:

(a) classes of persons for the purposes of subparagraph (2)(b)(iii);

(b) classes of persons for the purposes of subparagraph (2)(b)(iv);

(c) a percentage for the purposes of subsection (4);

(d) matters or statements for the purposes of paragraph 129AAD(8)(bc).

Giving notices to State and Territory Health Departments

(10) If:

(a) either of the following is given to a person in relation to a professional service:

(i) a determination under subsection (2);

(ii) a notice mentioned in subsection (5); and

(b) the professional service was rendered, or purportedly rendered, in a hospital mentioned in subsection (11) of a State or Territory;

then, a copy of the determination or notice may be given to the head (however described) of the Health Department (within the meaning of the *National Health Reform Act 2011*) of that State or Territory.

(11) For the purposes of subsection (10), a hospital is a facility in that State or Territory for which:

(a) a declaration is in force under paragraph 121‑5(6)(a) of the *Private Health Insurance Act 2007*; and

(b) a statement is included in the declaration (as mentioned in subsection 121-5(8) of that Act) that the hospital is a public hospital.

129ACB Review of decisions relating to shared debt determinations

(1) If the Chief Executive Medicare (the ***CEO***) makes a determination under subsection 129ACA(2) to claim a recoverable amount as a debt, the primary debtor and secondary debtor (or the estates of those persons) may apply in writing to the CEO, in the form approved in writing by the CEO, for a review of the decision to make the determination.

(2) An application under subsection (1) for review of a decision must be made within 28 days after the person or estate is notified of the decision under subsection 129ACA(3).

(3) If the CEO receives an application under subsection (1) from a person or estate, the CEO must provide written notice of the application and a copy of the application to each other person or estate mentioned in that subsection.

(4) The other person or estate may give a written submission to the CEO within the period specified in the notice (which must not be less than 28 days after the day the notice is given) which states:

(a) whether the decision should be confirmed, varied or revoked; and

(b) the person’s reasons for why the decision should be confirmed, varied or revoked.

(5) On receiving the application and any written submissions under subsection (4), the CEO must:

(a) review the decision; and

(b) confirm, vary or revoke the decision.

(6) The CEO must give to the applicant and each other person mentioned in subsection (1) written notice of the decision (the ***reconsidered decision***) on the review.

(7) An application may be made to the Administrative Appeals Tribunal for review of a reconsidered decision.

(8) However, subsection (7) applies only if a garnishee notice is given under subsection 129AEG(1) in relation to the debt to which the reconsidered decision relates.

(9) Despite paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975*, if a garnishee notice is given under subsection 129AEG(1) in relation to the debt to which the reconsidered decision relates, an application mentioned in subsection (7) of this section must be made within the period of 28 days after the day the garnishee notice is given.

(10) To avoid doubt:

(a) a decision referred to in subsection 129ACA(2) may be reviewed by the CEO under subsection (5) of this section once only; and

(b) a reconsidered decision takes effect:

(i) on the day specified in the reconsidered decision; or

(ii) if a day is not specified—on the day on which the reconsidered decision is made; and

(c) a reconsidered decision may specify a percentage of zero for the purposes of subsection 129ACA(4).

129AD Recovery of certain determined amounts

Where a final determination under section 106TA, or a determination by a Medicare Participation Review Committee under subsection 124F(6), 124FB(1), 124FC(1) or 124FF(5), that an amount be payable to a person (in this section referred to as ***the payee***) by another person takes effect or takes effect as varied, the amount specified in the determination, or in the determination as varied, is recoverable by the payee from the other person as a debt due to the payee.

129AE Recovery of amounts paid in respect of certain diagnostic imaging services

Where an amount is purportedly paid by way of benefit under this Act in respect of a diagnostic imaging service in circumstances where, under section 16C, no benefit was payable because rendering the service involved a contravention of a law of a State or Territory relating directly or indirectly to the use of diagnostic imaging procedures or diagnostic imaging equipment, the amount is recoverable as a debt due to the Commonwealth from the person who contravened the law of the State or Territory.

129AEA Liability for administrative penalty

Subsection 129AC(1) applies

(1) A person is liable for an administrative penalty in respect of a professional service rendered by, or on behalf of, the person if:

(a) the Chief Executive Medicare (the ***CEO***) has served a notice (as mentioned in subsection 129AAI(4)) on the person claiming an amount (the ***total amount***) as a debt due to the Commonwealth under subsection 129AC(1); and

(b) the total amount consists of, or includes, an amount (the ***recoverable amount***) in respect of the service; and

(d) the total amount is more than:

(i) $2,500; or

(ii) if a higher amount is prescribed by the regulations—that higher amount.

Subsection 129AC(1A) or (1C) applies

(2) A person is liable for an administrative penalty in respect of a particular professional service if:

(a) a notice was given to the person under section 129AAD requiring the person to produce a document, extract or copy relevant to the particular professional service; and

(b) subsection 129AC(1A) or (1C) applies in respect of the person and the particular professional service; and

(c) if the notice specifies one or more other professional services—either or both of subsections 129AC(1A) and (1C) apply in respect of the person and any other professional service specified in the notice; and

(d) the sum of the amounts that may be recovered from the person under those subsections in respect of the particular professional service, and any other professional service specified in the notice, is more than:

(i) $2,500; or

(ii) if a higher amount is prescribed by the regulations—that higher amount; and

(e) the CEO has served a notice on the person claiming as a debt due to the Commonwealth the amount (the ***recoverable amount***) that may be recovered from the person under whichever of subsection 129AC(1A) or (1C) applies in respect of the person and the particular professional service.

Subsection 129AC(1E) applies

(3) A person (the ***practitioner***) who rendered a particular professional service, or on whose behalf a particular professional service was rendered, is liable for an administrative penalty in respect of the service if:

(a) a notice was given to another person under section 129AAD requiring the person to produce a document, extract or copy relevant to the particular professional service; and

(b) subsection 129AC(1E) applies in respect of the practitioner and the particular professional service; and

(c) if the notice specifies one or more other professional services—subsection 129AC(1E) applies in respect of the practitioner and any other professional service specified in the notice; and

(d) the sum of the amounts that may be recovered from the practitioner under that subsection in respect of the particular professional service, and any other professional service specified in the notice, is more than:

(i) $2,500; or

(ii) if a higher amount is prescribed by the regulations—that higher amount; and

(e) the CEO has served a notice on the practitioner claiming as a debt due to the Commonwealth the amount (the ***recoverable amount***) that may be recovered from the practitioner under subsection 129AC(1E) in respect of the particular professional service.

Subsection 129ACA(2) applies

(4) A person is liable for an administrative penalty in respect of a professional service if:

(a) the CEO has made a determination under subsection 129ACA(2) in relation to a recoverable amount in respect of the service; and

(b) notice has been served on the person (as mentioned in subsection 129ACA(5)) claiming the shared amount or remaining amount (as the case may be) of that recoverable amount as a debt due to the Commonwealth; and

(c) the recoverable amount is more than:

(i) $2,500; or

(ii) if a higher amount is prescribed by the regulations—that higher amount.

129AEB Amount of administrative penalty

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

Base penalty amount

(2) Subject to subsections (3) ~~and (4)~~, (4) and (5), the amount (the ***base penalty amount***) of the administrative penalty is 20% of whichever of the following applies in respect of the professional service:

(a) the recoverable amount referred to in paragraph 129AEA(1)(b);

(b) the recoverable amount referred to in paragraph 129AEA(2)(e);

(c) the recoverable amount referred to in paragraph 129AEA(3)(e);

(d) the recoverable amount referred to in paragraph 129AEA(4)(a).

Reductions in base penalty amount

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

| **Reductions in base penalty amount** | | |
| --- | --- | --- |
| **Item** | **If…** | **the base penalty amount is reduced by…** |
| 1 | before the Chief Executive Medicare (the ***CEO***) contacts the person (whether by notice under subsection 129AAD(2) or (3)) about the professional service, the person voluntarily tells the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), in the form approved in writing by the CEO, 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 Chief Executive Medicare (the ***CEO***) contacts the person under subsection 129AAD(3) about the service; and  (b) before the CEO gives a notice to the person under subsection 129AAD(2) that specifies the service; and  (c) before the CEO gives notice to the person under subsection 129AAI(1) or 129ACA(7) of a decision to claim an amount as a debt in relation to the service;  the person voluntarily tells the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), in the form approved in writing by the CEO, 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 Chief Executive Medicare (the ***CEO***) gives a notice to the person under subsection 129AAD(2) that specifies the service; and  (b) before the end of the period specified in the notice; and  (c) before the CEO gives notice to the person under subsection 129AAI(1) or 129ACA(7) of a decision to claim an amount as a debt in relation to the service;  the person tells the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), in the form approved in writing by the CEO, 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 | 25% |

Increases in base penalty amount

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

(a) the Chief Executive Medicare gives a notice to the person under section 129AAD or subsection 129ACA(7) that specifies the service; and

(b) the person does not comply with the notice in respect of the service, or any other professional service specified in the notice, within the period specified in the notice.

Shared debt determinations

(5) If the administrative penalty is in respect of a professional service for which a determination has been made under subsection 129ACA(2):

(a) apply subsections (3) and (4) in relation to the primary debtor and not the secondary debtor; and

(b) apportion the base penalty amount calculated in accordance with paragraph (a) of this subsection between the primary debtor and secondary debtor in the same way as the recoverable amount in respect of the professional service was apportioned in accordance with the determination made under subsection 129ACA(2).

Interaction between reduction and increase

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

129AEC Notice of administrative penalty

The Chief Executive Medicare (the ***CEO***) must give to a person who the CEO has assessed, in accordance with sections 129AEA and 129AEB, is liable to an administrative penalty, written notice of the assessment which includes the following:

(a) the person’s liability to pay an administrative penalty in respect of one or more professional services;

(b) the professional service to which each administrative penalty relates;

(c) if there is more than one professional service—the total of the administrative penalties;

(d) the day by which the penalty becomes due for payment (which must be at least 14 days after the day on which the notice is given);

(e) the fact that the notice is given under this section.

The notice may also deal with a debt due to the Commonwealth under section 129AC or 129ACA arising in relation to the professional service.

(2) A person may apply to the Administrative Appeals Tribunal for review of an assessment by the CEO of the person’s liability to pay an administrative penalty for which notice has been given under subsection (1).

(3) However, subsection (2) applies only if a garnishee notice is given under subsection 129AEG(1) in relation to the debt to which the administrative penalty relates.

(4) Despite paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975*, if a garnishee notice is given under subsection 129AEG(1) in relation to the debt to which the administrative penalty relates, an application mentioned in subsection (2) of this section must be made within the period of 28 days after the day the garnishee notice is given.

129AECA Power to obtain information relating to a debt

(1) The Chief Executive Medicare (the ***CEO***) may, by written notice given to a person who owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 129AAI(4) or 129ACA(5), require the person to do either or both of the following:

(a) give to the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), information in writing that is relevant to the person’s financial situation;

(b) produce to the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), a document that is in the person’s custody or under the person’s control and is relevant to the person’s financial situation.

(2) An individual who owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 129AAI(4) or 129ACA(5) must, within 14 days after the notice is served, notify the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), of an address for the purposes of giving documents to the individual relating to the debt.

Civil penalty: 20 penalty units.

(3) If:

(a) an individual owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 129AAI(4) or 129ACA(5); and

(b) the individual has notified an address to the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) under subsection (2); and

(c) the address changes;

then the individual must notify the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), of the change within 14 days after the change.

Civil penalty: 20 penalty units.

(4) If the CEO reasonably believes that a person may have information or a document:

(a) that would help the CEO locate another person (the ***debtor***) who owes a debt due to the Commonwealth for which notice has been served as mentioned in subsection 129AAI(4) or 129ACA(5); or

(b) that is relevant to the debtor’s financial situation;

the CEO may, by written notice given to the person, require the person to give the information in writing, or produce the document, to the CEO or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*).

(5) A notice under subsection (1) or (4) must specify the following:

(a) how the person is to give the information in writing or produce the document;

(b) the period (which must be at least 14 days after the day the notice is given) within which the person is to give the information or produce the document;

(c) that the notice is given under subsection (1) or (4) (as the case requires).

(6) A person contravenes this subsection if:

(a) the person is given a notice under subsection (1) or (4) requiring the person to give information in writing or produce a document; and

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

Civil penalty:

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

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

(7) Subsection (2), (3) or (6) does not apply if the person has a reasonable excuse.

Note: A person who wishes to rely on subsection (7) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection (see section 130H).

129AED Waiver and repayment of certain debts arising under the Chronic Disease Dental Scheme

When this section applies

(1) This section applies in relation to a purported payment of medicare benefit in respect of a service referred to in Schedule 1 to the *Health Insurance (Dental Services) Determination 2007* if:

(a) the service was provided by a dental practitioner; and

(b) the payment exceeded the amount (if any) that should have been paid; and

(c) there was a failure to comply with subsection 10(2) (quotation for dental services and reporting) of the Determination in relation to the service; and

(d) the Chief Executive Medicare is satisfied that the excess is solely attributable to the failure to comply with subsection 10(2) of the Determination.

Note: The Determination was made under subsection 3C(1) of this Act. It ceased at midnight 30 November 2012 (see section 2A of the Determination).

(2) However, this section does not apply in relation to a purported payment of medicare benefit in respect of a service that was rendered on or after 1 April 2010 unless, before the end of 30 November 2014, the dental practitioner provides or has provided the Chief Executive Medicare with evidence that the documents that, under subsection 10(2) of the Determination, should have been given to the patient and general practitioner before the relevant course of treatment began have since been given to those persons.

Waiver and repayment of debts

(3) If the excess, or part of the excess, is recoverable under section 129AC as a debt due to the Commonwealth, the Chief Executive Medicare must, on behalf of the Commonwealth, waive the debt.

(4) If the excess, or part of the excess:

(a) has been repaid to the Commonwealth by a person (or a person’s estate); or

(b) has otherwise been recovered by the Commonwealth from a person (or a person’s estate), including by way of set‑off;

the Chief Executive Medicare must, on behalf of the Commonwealth, pay to the person (or to the person’s estate) the amount paid or recovered.

(5) An amount payable under subsection (4) is reduced by any amount already paid by the Commonwealth in respect of the repaid or recovered amount.

(6) A reference in subsection (3), (4) or (5) to an excess includes:

(a) any amount of administrative penalty for which the dental practitioner is liable to the Commonwealth under section 129AEA in relation to the excess; and

(b) any interest paid or payable in relation to the excess under subsection 129AC(2) or (3).

129AEE Notice of decision to waive, or not to waive, a debt

(1) The Chief Executive Medicare must give written notice of the following decisions:

(a) a decision to waive a debt under subsection 129AED(3);

(b) a decision to pay an amount under subsection 129AED(4);

(c) a decision not to waive a debt under subsection 129AED(3), or not to pay an amount under subsection 129AED(4), because the Chief Executive Medicare is not satisfied of the matter referred to in paragraph 129AED(1)(d).

(2) The notice must be given to the dental practitioner who provided the service referred to in subsection 129AED(1), or to his or her estate.

(3) A failure to give notice under this section of a decision does not affect the validity of the decision.

129AEF Recoverable amounts may be set off

(1) This section applies in relation to an amount (the ***recoverable amount***) recoverable from a person, or from the estate of that person, as a debt due to the Commonwealth if the amount is one of the following:

(a) an amount under subsection 129AC(1), (1A), (1C), (1E) or (1G) where:

(i) any rights of review under section 129AAJ have been exhausted or have expired; and

(ii) the 3 month period referred to in subparagraph 129AC(2)(c)(i) has expired;

(aa) an amount under paragraph 129ACA(3)(b) or (c) where any rights of review under section 129ACB have been exhausted or have expired;

(b) an amount under section 129AD where:

(i) the amount is specified in a final determination under section 106TA; and

(ii) the Commonwealth is the payee;

(c) an amount under section 129AE.

(2) The Chief Executive Medicare (the ***CEO***) may, on behalf of the Commonwealth, set off the whole or a part of the recoverable amount against the whole or a part of an amount payable (the ***payable amount***) to the person or estate under this Act.

(3) However, an amount set off under subsection (2) must not exceed:

(a) 20% of the payable amount; or

(b) if the CEO and the person or estate agree to a higher percentage of the amount payable—that percentage.

(4) To avoid doubt, the payable amount is taken to have been paid in full to the person or estate if the payable amount, less any amount set off against the amount under subsection (2), is paid to the person or estate.

129AEG Garnishee notices

Garnishee notice

(1) If a recoverable amount referred to in paragraph 129AEF(1)(a), (aa) or (c) is recoverable from a person (the ***debtor***), or from the estate of that person, the Chief Executive Medicare (the ***CEO***) may give a written notice (the ***garnishee notice***) to a person who owes, or may later owe, money to the debtor or estate.

When third party is taken to owe money

(2) A person (the ***third party***) is taken to owe money (the ***available money***) to the debtor or estate if the third party:

(a) is a person by whom the available money is due or accruing to the debtor or estate; or

(b) holds the money for, or on account of, the debtor or estate; or

(c) holds the money on account of some other person for payment to the debtor or estate; or

(d) has authority from some other person to pay the money to the debtor or estate.

(3) The third party is taken to owe the available money to the debtor or estate even if:

(a) the money is not due, or is not so held, or payable under the authority, unless a condition is fulfilled; and

(b) the condition has not been fulfilled.

How much is payable under the notice

(4) The garnishee notice must:

(a) require the third party to pay to the Commonwealth the lesser of, or a specified amount not exceeding the lesser of:

(i) the recoverable amount; or

(ii) the available money; or

(b) if there will be amounts of the available money from time to time—require the third party to pay to the Commonwealth a specified amount, or a specified percentage, of each amount of the money, until the recoverable amount is recovered.

When amount must be paid

(5) The garnishee notice must require the third party to pay an amount under paragraph (4)(a), or each amount under paragraph (4)(b), within the period specified in the notice.

Debtor must be notified

(6) The CEO must send a copy of the garnishee notice to the debtor or estate.

Setting off amounts

(7) If a person other than the third party has paid an amount to the Commonwealth that satisfies all or part of the recoverable amount:

(a) the CEO must notify the third party of that fact; and

(b) any amount that the third party is required to pay under the garnishee notice is reduced by that amount.

Indemnity

(8) If an amount is paid by the third party in accordance with the garnishee notice:

(a) the payment is taken to have been authorised by:

(i) the debtor or estate; and

(ii) any other person who is entitled to all or a part of the amount; and

(b) the third party is indemnified for the payment.

Garnishee notice to Commonwealth, State or Territory

(9) If the third party mentioned in subsection (2) is the Commonwealth, a State or a Territory, the CEO may give the garnishee notice to a person who is (as the case requires):

(a) employed by the Commonwealth, State or Territory; and

(b) required, or authorised, to disburse public money under a law of the Commonwealth, State or Territory.

Section binds the Crown

(10) This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

(11) However, this section does not make the Crown liable to be prosecuted for an offence.

(12) To avoid doubt, this section does not imply that the Crown is, or is not, bound by any other provision of this Act.

Review of decisions

(13) The debtor or estate may apply to the Administrative Appeals Tribunal for review of a decision by the CEO to give a garnishee notice to a person under subsection (1).

129AEH Failure to comply with garnishee notice

(1) A person commits an offence if:

(a) the person is given a garnishee notice under section 129AEG; and

(b) the person fails to comply with the notice.

Penalty: 20 penalty units.

(2) The court may, in addition to imposing a penalty on a person convicted of an offence against subsection (1) in relation to failing to pay an amount under the notice, order the person to pay to the Commonwealth an amount not exceeding that amount.