

FIRST PRINT

**MEDICALLY ACQUIRED AIDS VICTIMS COMPENSATION
BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to provide for the payment of compensation to persons who have contracted Human Immunodeficiency Virus infection (HIV) or Acquired Immune Deficiency Syndrome (AIDS) from infected transfused blood or infected blood products or from having sexual contact with persons who were infected by this means or from being the natural child of persons so infected.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 January 1994 or on a proclaimed day, whichever is the earlier.

Clause 3 defines terms for the purposes of the proposed Act.

Clause 4 provides for the appointment by the Minister for Health of a body, person or persons to administer the compensation scheme.

Clause 5 states who is eligible for compensation.

Clause 6 requires that applications for compensation be made within a specified time.

Clause 7 stipulates what evidence must be lodged with an application for compensation.

Clause 8 makes provision for certification of infection.

Clause 9 provides that compensation is payable to an eligible person out of money to be provided by Parliament and, subject to that appropriation, is \$300,000.

Clause 10 provides for payment of the cost of treatment to eligible persons from money to be provided by Parliament.

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Clause 11 places certain qualifications on the entitlement to payment of compensation and the cost of treatment.

Clause 12 requires lodgment of applications for compensation with the administering authority.

Clause 13 enables the administering authority to require that further evidence be lodged in support of an application.

Clause 14 extinguishes any right of eligible persons, or persons claiming by or under eligible persons, to recover damages or other money in relation to the contraction of HIV or AIDS by eligible persons once they have been paid compensation under the proposed Act.

Clause 15 provides that the proposed Act binds the Crown.

Clause 16 empowers the Governor to make regulations in aid of the proposed Act.

FIRST PRINT

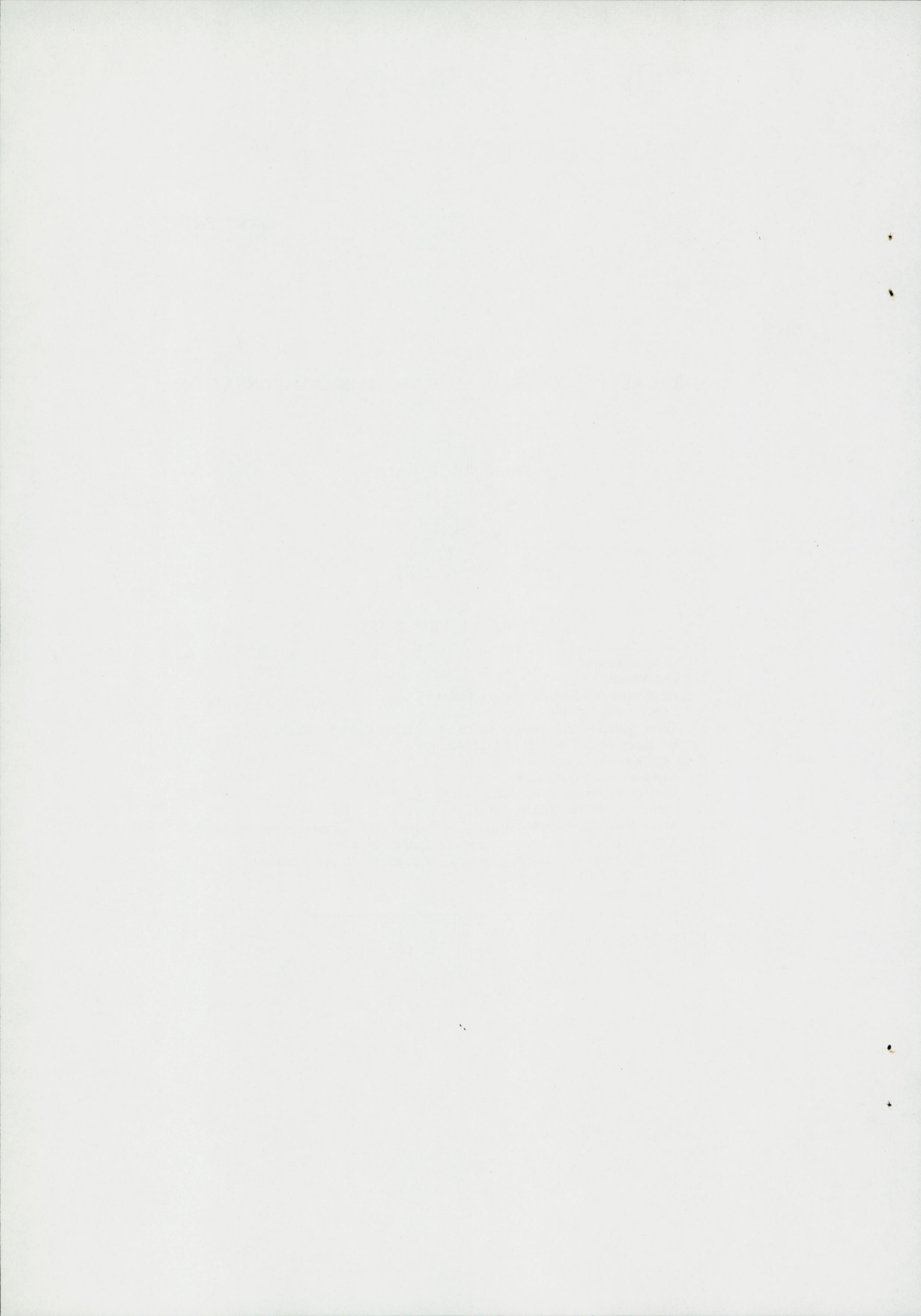
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**MEDICALLY ACQUIRED AIDS VICTIMS COMPENSATION
BILL 1992**

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to provide for the payment of compensation to persons who have contracted Human Immunodeficiency Virus infection or Acquired Immune Deficiency Syndrome from infected transfused blood or infected blood products.

Medically Acquired AIDS Victims Compensation 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Medically Acquired AIDS Victims Compensation Act 1992.

5 Commencement

2. This Act commences on 1 January 1994 or on a day to be appointed by proclamation, whichever is the earlier.

Definitions

3. In this Act:

10 “**administering authority**” means the body, person or persons appointed by the Minister for Health under section 4;

“**AIDS**” means Acquired Immune Deficiency Syndrome;

“**blood products**” means products or extracts derived or extracted from blood by any process of manufacture;

15 “**eligible person**” means a person referred to in section 5;

“**HIV**” means Human Immunodeficiency Virus infection;

“**hospital**” means:

(a) an incorporated hospital mentioned in the Second Schedule to the Public Hospitals Act 1929; or

20 (b) a separate institution mentioned in the Third Schedule to that Act; or

(c) a hospital mentioned in the Fifth Schedule to that Act; or

(d) a hospital under the control of an area health service constituted under the Area Health Services Act 1986; or

25 (e) a private hospital within the meaning of the Private Hospitals and Day Procedure Centres Act 1988;

“**infected**” means infected by HIV or AIDS;

“**medical practitioner**” means a person who is registered as a medical practitioner under the Medical Practitioners Act 1938.

30 Appointment of administering authority

4. The Minister for Health must appoint a body, person or persons to administer the scheme for payment of compensation to eligible persons under this Act.

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Persons eligible for compensation

5. A person is eligible for compensation under this Act if the person has contracted HIV or AIDS as a consequence of:

- (a) receiving a transfusion of infected blood or an infusion of infected blood products in New South Wales between 1 January 1980 and 31 December 1985 (both dates inclusive); or 5
- (b) having sexual contact at any time with another person who contracted HIV or AIDS in the manner referred to in paragraph (a); or
- (c) being the natural child of a person who contracted HIV or AIDS in the manner referred to in paragraph (a) or (b). 10

Time within which compensation application must be made

6. An application for compensation under this Act by or on behalf of an eligible person must be made within whichever is the later of:

- (a) 12 months after the date of commencement of this Act; or 15
- (b) 12 months after the person or, in the case of an eligible person who is a child, a parent or guardian of the eligible person is informed by a medical practitioner that the eligible person has contracted HIV or AIDS.

Evidence to be lodged with application

7. An application for compensation under this Act must be accompanied by written certification from the Australian Red Cross Society, the Commonwealth Serum Laboratories Commission, the Department of Health, a hospital or a medical practitioner that the eligible person by or on whose behalf the application is made:

- (a) received a transfusion of infected blood or an infusion of infected blood products in New South Wales between 1 January 1980 and 31 December 1985 (both dates inclusive); or 25
- (b) has contracted HIV or AIDS as a consequence of sexual contact with another person who contracted HIV or AIDS in the manner referred to in paragraph (a); or 30
- (c) has contracted HIV or AIDS as a consequence of being the natural child of a person who contracted HIV or AIDS in the manner referred to in paragraph (a) or (b).

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Certification of infection

8. The Australian Red Cross Society, the Commonwealth Serum Laboratories Commission, the Department of Health, a hospital or a medical practitioner must, as soon as practicable, on application by or on behalf of an eligible person or the administering authority, provide a certificate for the purposes of section 7 stating whether, to the best of its or his or her knowledge, information and belief, the eligible person by or on whose behalf an application for compensation under this Act is being made:
- 10 (a) received a transfusion of infected blood or an infusion of infected blood products in New South Wales between 1 January 1980 and 31 December 1985 (both dates inclusive); or
- 15 (b) has contracted HIV or AIDS as a consequence of sexual contact with another person who contracted HIV or AIDS in the manner referred to in paragraph (a); or
- (c) has contracted HIV or AIDS as a consequence of being the natural child of a person who contracted HIV or AIDS in the manner referred to in paragraph (a) or (b).

Amount of compensation

- 20 9. (1) Compensation is payable to an eligible person out of money to be provided by Parliament and, subject to that appropriation, is \$300,000.
- (2) The administering authority is authorised to pay the compensation to an eligible person and is, subject to section 11, to pay \$300,000 to each eligible person who applies for compensation in accordance with this Act.

25 **Cost of treatment to be paid**

- 30 10. (1) In addition to the compensation referred to in section 9, an eligible person who applies for compensation in accordance with this Act is entitled to be paid out of money to be provided by Parliament and, subject to that appropriation and section 11, to receive from the administering authority the full amount of all costs, charges, expenses and outgoings reasonably incurred by or on behalf of the eligible person for or in respect of medical and hospital treatment for HIV or AIDS.
- 35 (2) The costs, charges, expenses and outgoings referred to in this section include all amounts paid for drugs, medicines, vitamin and nutrient supplements, hospitalisation, ambulances, medical and nursing care and home nursing.

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Qualifications on entitlement to payment

11. (1) If insufficient money is appropriated by Parliament to enable the administering authority to pay \$300,000 and the full amount of all costs, charges, expenses and outgoings referred to in section 10 to each eligible person who applies for compensation, the administering authority may pay the compensation and the costs, charges, expenses and outgoings to eligible persons by instalments on an equitable, pro rata basis. 5

(2) Compensation and costs, charges, expenses and outgoings payable under this Act are not recoverable as a debt due by the Crown and are not payable otherwise than out of money appropriated by Parliament for the purpose. 10

Application for compensation to be lodged with administering authority

12. (1) An application for compensation under this Act is to be lodged with the administering authority. 15

(2) Details of all amounts claimed by or on behalf of an eligible person under section 10 are to be lodged with the administering authority.

Administering authority may require further evidence

13. The administering authority may require the lodgment of further evidence in support of an application for compensation or a claim under section 10 or in clarification of such an application or claim and may require such evidence to be verified by statutory declaration. 20

Extinguishment of cause of action on payment of compensation

14. Any cause of action or right to recover damages or other money which an eligible person, or any person claiming on behalf of or under an eligible person, has or may have against any other person (including, but not limited to, the Australian Red Cross Society, the Commonwealth Serum Laboratories Commission, the State of New South Wales or a hospital) as a result of, or in connection with, the eligible person contracting HIV or AIDS is extinguished on the payment of compensation under this Act to, or on behalf of, the eligible person or any person claiming on behalf of or under the eligible person. 25
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Act to bind Crown

15. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities. 35

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Regulations

16. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be
5 prescribed for carrying out or giving effect to this Act.
