



Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

No. 156, 1988

**An Act relating to the rehabilitation of employees
of the Commonwealth and certain corporations and
to workers' compensation for those employees and
certain other persons, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

Part I—Preliminary	1
1 Short title	1
2 Commencement	1
3 Application of Act	1
4 Interpretation	1
4AA Most injuries for members of the Defence Force no longer covered by this Act	17
4A Declaration that ACT a Commonwealth authority	19
5 Employees	19
5A Definition of <i>injury</i>	26
5B Definition of <i>disease</i>	27
6 Injury arising out of or in the course of employment	28
6A Injury arising out of or in the course of employment—extended operation	31
7 Provisions relating to diseases	32
8 Normal weekly earnings	35
9 Relevant period	40
10 Recovery of damages	41
11 Liability of relevant authority	41
12 Amounts of compensation	42
13 Indexation—Consumer Price Index	42
13AA Indexation—Wage Price Index	43
13A Application of <i>Criminal Code</i>	45
Part II—Compensation	46
Division 1—Injuries, property loss or damage, medical expenses	46
14 Compensation for injuries	46
15 Compensation for loss of or damage to property used by employee	46
15A Most loss or damage to property used by members of the Defence Force etc. no longer covered by this Act	47
16 Compensation in respect of medical expenses etc.	47
Division 2—Injuries resulting in death	51
17 Compensation for injuries resulting in death	51
18 Compensation in respect of funeral expenses	53
Division 3—Injuries resulting in incapacity for work	54
19 Compensation for injuries resulting in incapacity	54

20	Compensation for injuries resulting in incapacity where employee is in receipt of a superannuation pension.....	60
21	Compensation for injuries resulting in incapacity where employee is in receipt of a lump sum benefit	61
21A	Compensation for injuries resulting in incapacity if employee is in receipt of a superannuation pension and a lump sum benefit	63
22	Compensation where employee is maintained in a hospital.....	64
23	Compensation for incapacity not payable in certain cases.....	65
23A	Repayment of salary, wages or pay, and re-crediting of paid leave, where compensation claim successful.....	66
Division 4—Injuries resulting in impairment		68
24	Compensation for injuries resulting in permanent impairment.....	68
25	Interim payment of compensation	69
26	Payment of compensation.....	70
27	Compensation for non-economic loss.....	71
28	Approved Guide	72
Division 5—Household and attendant care services		74
29	Compensation for household services and attendant care services obtained as a result of a non-catastrophic injury.....	74
29A	Compensation for household services and attendant care services obtained as a result of a catastrophic injury	76
Division 6—Miscellaneous		79
30	Redemption of compensation	79
31	Recurrent payments after payment of lump sum	80
32	Cancelled determinations not to affect certain payments of compensation.....	80
33	Reduction of compensation in certain cases	81
Part III—Rehabilitation		83
Division 1—Preliminary		83
34	Definitions.....	83
Division 2—Approved rehabilitation program providers		84
34A	How this Part applies to partnerships	84
34B	Persons may seek approval as rehabilitation program providers.....	85
34C	Applications for initial approval	85
34D	Comcare to establish criteria for approval, or renewal of approval, of persons as rehabilitation program providers.....	86

34E	Comcare to establish operational standards for rehabilitation program providers	86
34F	The initial approval decision	87
34G	Duration of initial approval given on application	87
34H	Comcare may also approve persons as rehabilitation program providers on its own initiative	88
34J	Persons may seek renewal of approval as rehabilitation program providers in certain circumstances	89
34K	The renewal application.....	89
34L	The renewal decision	90
34M	Duration of renewal of approval	91
34N	Further information may be required of applicants.....	91
34P	Initial approval or renewal is subject to conditions	91
34Q	Revocation of approval.....	92
34R	Review of decisions.....	92
34S	Approved forms.....	93
Division 3—Rehabilitation programs		94
35	Exempt authorities	94
36	Assessment of capability of undertaking rehabilitation program	94
37	Provision of rehabilitation programs	95
38	Review of certain determinations by Comcare	97
39	Compensation payable in respect of certain alterations etc.	98
40	Duty to provide suitable employment.....	100
41	Rehabilitation authorities to comply with guidelines.....	100
41A	Delegation by rehabilitation authority	100
41B	Application of rehabilitation provisions to former Commonwealth authorities.....	101
41C	Application of rehabilitation provisions to successors of former Commonwealth authorities	101
41D	Application of rehabilitation provisions to the Australian Capital Territory if it ceases to be a Commonwealth authority	103
Part IV—Liabilities arising apart from this Act		104
42	Interpretation	104
43	Certain persons may request cessation of compensation payments.....	104
44	Action for damages not to lie against Commonwealth etc. in certain cases.....	105
45	Actions for damages—election by employees.....	106

46	Notice of common law claims against third party	107
47	Notice of common law claims against Commonwealth.....	108
48	Compensation not payable where damages recovered.....	108
49	Dependants not claiming compensation	110
50	Common law claims against third parties.....	112
51	Payment of damages by persons to Comcare.....	115
52	Compensation not payable both under Act and under award.....	117
52A	Comcare's rights and obligations in respect of certain action for non-economic loss	118
Part V—Claims for compensation		121
53	Notice of injury or loss of, or damage to, property.....	121
54	Claims for compensation	122
55	Survival of claims.....	122
56	Claims may not be made in certain cases	123
57	Power to require medical examination	123
58	Power to request the provision of information.....	124
59	Certain documents to be supplied on request.....	125
Part VI—Reconsideration and review of determinations		126
60	Interpretation	126
61	Determinations to be notified in writing.....	127
62	Reconsideration of determinations	127
63	Reviewable decision to be notified in writing	128
64	Applications to the Administrative Appeals Tribunal	129
65	Modifications of the <i>Administrative Appeals Tribunal Act</i> <i>1975</i>	129
66	Evidence in proceedings before Administrative Appeals Tribunal	130
67	Costs of proceedings before Administrative Appeals Tribunal	131
Part VII—Administration and finance		136
Division 1—Comcare		136
68	Establishment	136
69	Functions	136
70	Powers	139
70A	Comcare may charge for certain services	139
70B	Formation and activities of Comcare subsidiaries	139
71	Power to obtain information from Departments and authorities.....	139

72	Manner in which claims are to be determined	140
72A	Duty to assist the Commission and the Seafarers Safety, Rehabilitation and Compensation Authority	140
73	Directions by Minister.....	141
73A	Guidelines by Commission.....	141
73B	Delegation by Comcare	142
74	Constitution of Comcare.....	142
76	The Chief Executive Officer.....	143
79	Persons acting as Chief Executive Officer.....	143
80	Remuneration and allowances	144
81	Leave of absence	144
83	Resignation.....	145
84	Termination of appointment	145
85	Annual report.....	145

Division 2—Deputy Chief Executive Officer, staff and consultants

		146
86	Deputy Chief Executive Officer	146
87	Duties of Deputy Chief Executive Officer.....	146
88	Staff.....	146
89	Consultants	147

Division 3—The Commission

		148
89A	Establishment	148
89B	Functions	148
89C	Powers	148
89D	Directions by Minister.....	148
89E	Constitution	149
89F	Appointment.....	149
89G	Term of office.....	150
89H	Deputies of members.....	150
89J	Acting Chairperson.....	151
89K	Remuneration and allowances	151
89L	Leave of absence	151
89M	Disclosure of interests	152
89N	Resignation.....	152
89P	Termination of appointment	153
89Q	Meetings.....	153
89R	Delegation by Commission and sub-delegation.....	154
89S	Annual reports.....	155

Division 4—Finance	156
90B	Payments to Comcare in respect of long-term liabilities 156
90C	Source of funds to enable Comcare to meet its liabilities and other expenses 156
90D	Appropriation 159
91	Money of Comcare 159
92	Estimates of receipts and expenditure 160
93	Exemption from taxation 160
95	Borrowing..... 160
Division 4A—Premiums and regulatory contributions	162
96	Extended meaning of <i>Commonwealth authority</i> for purposes of regulatory contributions 162
96A	Available scheme funds..... 162
96B	Comcare-retained funds..... 163
96C	Principal officer 163
97	Determination of premiums..... 163
97A	Matters for consideration in determination of premium 163
97B	Determination of special premiums for non-economic loss in respect of injuries suffered after 30 June 1999 and before 1 July 2002 166
97C	Estimate of premium for certain Commonwealth authorities 167
97CA	Determination of exit contributions for former Commonwealth authorities 168
97CB	Determination of exit contributions for successors of former Commonwealth authorities..... 169
97CC	Determination of exit contributions for the Australian Capital Territory if it ceases to be a Commonwealth authority 171
97D	Regulatory contributions payable by an Entity or a Commonwealth authority 172
97DA	Regulatory contributions payable by a former Commonwealth authority etc..... 173
97DB	Constitutional limits 175
97E	Guidelines and principles 175
97F	Information to be given to Comcare..... 176
97G	Notice of determinations 178
97H	Payment of premium or regulatory contribution by an Entity or Commonwealth authority 178
97HA	Payment of exit contribution or regulatory contribution by a former Commonwealth authority etc 179

97J	Review by Comcare of determination of premium or regulatory contribution	179
97K	Further review by Commission of outcome of Comcare's review	181
97L	Refund of premium or regulatory contribution paid by an Entity or Commonwealth authority	182
97LA	Refund of exit contribution or regulatory contribution paid by a former Commonwealth authority etc.	183
97M	Variation of determination of premium or regulatory contribution payable by an Entity or Commonwealth authority	183
97MA	Variation of determination of exit contribution or regulatory contribution payable by a former Commonwealth authority etc.	185
97N	Repayment of premium excess etc.	186
97P	Late payment penalty	186
97Q	Refund of premiums to former Commonwealth authorities	188
97QA	Refund of premiums to successors of former Commonwealth authorities	189
97QB	Refund of premiums to the Australian Capital Territory if it ceases to be a Commonwealth authority.....	190
97QBA	Refund of exit contributions to former Commonwealth authorities	191
97QBB	Refund of exit contributions to successors of former Commonwealth authorities.....	192
97QBC	Refund of exit contributions to the Australian Capital Territory if it ceases to be a Commonwealth authority.....	194
97QC	Refunds to be made from Comcare-retained funds.....	195
97QD	Remission of exit contributions payable by former Commonwealth authorities.....	196
97QE	Remission of exit contributions payable by successors of former Commonwealth authorities	197
97QF	Remission of exit contributions payable by the Australian Capital Territory if it ceases to be a Commonwealth authority	198

Part VIII—Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

		200
Division 1—Preliminary		200
98A	Outline of Part	200
99	Definitions.....	201

100	Minister may declare a corporation eligible to be granted a licence under this Part	201
101	Ministerial directions concerning licences.....	202
Division 2—Powers of the Commission in relation to licences		203
102	Application for grant of a licence	203
103	The Commission’s power to grant licences	204
104	Licence decision	204
104A	Licence fees.....	206
105	The Commission may vary the scope of a licence or extend its term.....	207
106	Suspension or revocation of licences at the instance of the Commission.....	207
107	Revocation of licence at request of licensee	207
107A	Effect of suspension or revocation.....	208
Division 3—Authorisation to accept liability in respect of certain claims		209
108	Licence can authorise licensee to accept liability	209
108A	The consequences of a licensee’s authorisation to accept liability	209
Division 4—Authorisation to manage claims		212
108B	Licence can authorise licensee to manage claims	212
108C	The consequences of a licensee’s authorisation to manage claims	212
Division 5—Conditions of a licence		216
108D	The Commission may grant licence on conditions	216
Division 6—Miscellaneous		218
108E	Functions of licensees.....	218
108F	Powers of licensee	218
108G	Date of effect of certain notices under this Part.....	219
108H	Delegation by licensed authority	219
Part IX—Miscellaneous		220
109A	Jurisdiction of courts with respect to extraterritorial offences	220
109	Determinations to be in writing	220
110	Money paid to relevant authority for benefit of person	220
111	Provisions applicable on death of beneficiary	221
112	Assignment, set-off or attachment of compensation.....	222
112A	Making of compensation payments through employers of employees paid out of relevant money	223

112B	Making of compensation payments through employers of employees not paid out of relevant money	224
113	Recovery of amounts due to relevant authority	225
114	Recovery of overpayments	225
114A	Notice to Comcare of retirement of employee	226
114B	Recovery of overpayment to retired employee	227
114C	Comcare may write off debt	230
114D	Comcare may waive debt	230
115	Deduction of overpayments of repatriation pensions.....	231
116	Employees on compensation leave	232
117	Compensation payable to locally engaged overseas employees.....	233
118	Double benefits.....	235
119	Compensation where State compensation payable	236
120	Notice of departure from Australia etc.	238
121A	Confidential commercial information not to be published.....	239
122	Regulations.....	239
122A	Legislative rules	239
Part X—Transitional provisions		241
Division 1—Preliminary		241
123	Interpretation	241
123A	Injuries suffered before the commencing day.....	241
Division 2—Transitional provisions		242
124	Application of Act to pre-existing injuries	242
124A	Northern Territory to reimburse Comcare for certain compensation payments and administrative expenses	246
125	Payments under previous Acts.....	246
126	Notices, claims etc. under previous Acts	247
127	Settlements and determinations under previous Acts	248
128	Liability under previous Acts	249
128A	Comcare’s liability to be discharged by prescribed Commonwealth authorities in some cases	249
129	Application for review and other proceedings under previous Acts	250
129A	Reconsideration and review of certain determinations under 1971 Act.....	251
130	Money and investments held under 1971 Act.....	252

Division 3—Special transitional provisions relating to certain former employees	253
131 Former employees under 65 who are in receipt of superannuation benefits and are unable to engage in any work.....	253
132 Former employees under 65 who are not in receipt of superannuation benefits and are unable to engage in any work.....	254
132A Former employees under 65 who are capable of engaging in any work.....	255
133 Minimum benefit payable.....	257
134 Reduction of compensation on reaching pension age.....	257
135 Former employees 65 and over who are in receipt of superannuation benefits.....	258
136 Former employees 65 and over who are not in receipt of superannuation benefits.....	258
137 Redemption on request by former employee.....	258
Part XI—Operation of this Act in relation to certain defence-related injuries and deaths etc.	261
Division 1—Preliminary	261
140 Simplified outline of this Part.....	261
141 Definitions.....	261
Division 2—Management of defence-related claims	263
142 Functions of MRCC.....	263
143 Giving copies of defence-related claims etc.....	264
144 Provisions relating to management of claims etc.....	264
Division 2A—Treatment of certain defence-related injuries	268
144A Persons entitled to treatment for any injury under the MRCA or the <i>Veterans' Entitlements Act 1986</i> not entitled to certain compensation.....	268
144B Treatment of certain defence-related injuries to be provided under the MRCA or the <i>Veterans' Entitlements Act 1986</i>	268
144C Exceptional circumstances determination.....	271
Division 3—Administrative matters	272
145 Relevant authority.....	272
146 Rehabilitation authority etc.....	272
147 References to Comcare etc.....	272
148 Rehabilitation programs.....	274
149 Directions by Minister.....	274

150	Guidelines by Commission.....	274
151	Obtaining information	275
151A	Giving information	275
152	Delegation	276
153	Holding money on trust for person under a legal disability	276
154	Settlements and determinations etc. under the 1912 Act, the 1930 Act or the 1971 Act	276
Division 4—Reconsideration and review		278
155	Reconsideration and review.....	278
Division 5—Modifications relating to Comcare and Defence Department for employees who are engaged in defence service		279
156	Liabilities of Comcare and the Commission with respect to defence service	279
157	Application of certain provisions to Defence Department	279
158	Regulatory contributions by Defence Department.....	279
159	Modifications of provisions relating to contributions.....	280
Division 6—Appropriation		281
160	Appropriation	281
Division 7—Annual report		282
161	Annual report.....	282

An Act relating to the rehabilitation of employees of the Commonwealth and certain corporations and to workers' compensation for those employees and certain other persons, and for related purposes

Part I—Preliminary

1 Short title

This Act may be cited as the *Safety, Rehabilitation and Compensation Act 1988*.

2 Commencement

- (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

3 Application of Act

Subject to section 117, this Act extends to all places outside Australia, including the external Territories.

4 Interpretation

- (1) In this Act, unless the contrary intention appears:

ACT enactment means an enactment as defined by section 3 of the ACT Self-Government Act.

action for non-economic loss means any action (whether or not it involves the formal institution of a proceeding) to recover an amount for damages for non-economic loss sustained by an employee as a result of an injury suffered by that employee:

Section 4

- (a) that is taken by the employee against the employer, whether it is the Commonwealth, a Commonwealth authority or a licensed corporation, or against another employee; and
- (b) that follows an election made by the first-mentioned employee under subsection 45(1).

ACT Self-Government Act means the *Australian Capital Territory (Self-Government) Act 1988*.

administering authority means a Commonwealth authority that, immediately before the repeal of Part VIII, was an administering authority under that Part.

adoption means adoption under a law of a State or Territory or of a foreign country.

aggravation includes acceleration or recurrence.

ailment means any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development).

approved Guide means:

- (a) the document, prepared by Comcare in accordance with section 28 under the title “Guide to the Assessment of the Degree of Permanent Impairment”, that has been approved by the Minister and is for the time being in force; and
- (b) if an instrument varying the document has been approved by the Minister—that document as so varied.

approved program provider means a person or body approved under section 34F or 34H as a rehabilitation program provider and includes a person or body so approved whose approval is renewed under section 34L.

attendant care services, in relation to an employee, means services (other than household services, medical or surgical services or nursing care) that are required for the essential and regular personal care of the employee.

catastrophic injury means an injury, where the conditions specified in the legislative rules are satisfied.

Chairperson means the Chairperson of the Commission.

Chief Executive Officer means the Chief Executive Officer appointed under section 74, and includes a person who is acting as the Chief Executive Officer.

child: without limiting who is a child of a person for the purposes of this Act, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

claim means a claim under Part V.

claimant, in relation to a time after the death of a claimant, has the meaning given in subsection (11).

Comcare means the body corporate established by section 68.

Comcare subsidiary means an incorporated company formed by Comcare.

Commission means the Safety, Rehabilitation and Compensation Commission established by section 89A.

Commissioner means a member of the Commission other than the Chief Executive Officer.

Commonwealth, in relation to persons employed by a Commonwealth authority, has the additional meaning given in subsection 5(7).

Commonwealth authority means:

- (a) a body corporate that is incorporated for a public purpose by a law of the Commonwealth, other than a body declared by the Minister, by legislative instrument, to be a body corporate to which this Act does not apply; or
- (b) a body corporate that is incorporated for a public purpose by a law of a Territory (other than an ACT enactment or a law of the Northern Territory) and is declared by the Minister, by

Section 4

legislative instrument, to be a body corporate to which this Act applies; or

- (c) a body corporate:
 - (i) that is incorporated under a law of the Commonwealth or a law in force in a State or Territory;
 - (ii) in which:
 - (A) the Commonwealth has a controlling or substantial interest; or
 - (B) a Territory (other than the Australian Capital Territory or the Northern Territory) or a body corporate referred to in paragraph (a) or (b) has a controlling interest; and
 - (iii) that is declared by the Minister, by legislative instrument, to be a body corporate to which this Act applies; or
- (d) a body corporate:
 - (i) in which a body corporate declared under paragraph (c) has a controlling interest; and
 - (ii) that is declared by the Minister, by legislative instrument, to be a body corporate to which this Act applies; or
- (e) if a declaration is in force under section 4A, the Australian Capital Territory.

Note: For the purposes of the provisions relating to regulatory contributions under Division 4A of Part VII, *Commonwealth authority* has an extended meaning—see section 96.

compensation leave means any period during which an employee is absent from his or her employment due to an incapacity for work resulting from an injury in respect of which compensation is payable under section 19 or 22.

controlling interest, in relation to a body corporate, means an interest in the body corporate that enables the person holding the interest to:

- (a) control the composition of the board of directors of the body corporate; or

- (b) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the body corporate; or
- (c) control more than one-half of the issued share capital of the body corporate (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

corporation, in Part VIII, means:

- (a) a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; or
- (b) a body corporate that is, for the purposes of paragraph 51(xx) of the Constitution, a financial corporation formed within the limits of the Commonwealth; or
- (c) a body corporate that is, for the purposes of paragraph 51(xx) of the Constitution, a trading corporation formed within the limits of the Commonwealth; or
- (d) a body corporate that is incorporated in a Territory; but does not include a Commonwealth authority.

CTPA means the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*.

damages includes any amount paid under a compromise or settlement of a claim for damages, whether or not legal proceedings have been instituted, but does not include an amount paid in respect of costs incurred in connection with legal proceedings.

de facto partner of a person has the meaning given by the *Acts Interpretation Act 1901*.

Defence Department has the meaning given by the MRCA.

dependant, in relation to a deceased employee, means:

- (a) the spouse, parent, step-parent, father-in-law, mother-in-law, grandparent, child, stepchild, grandchild, sibling or half-sibling of the employee; or

Section 4

- (b) a person in relation to whom the employee stood in the position of a parent or who stood in the position of a parent to the employee;

being a person who was wholly or partly dependent on the employee at the date of the employee's death.

Note: See also subsection 4(2).

dependent means dependent for economic support.

Deputy Chief Executive Officer means the Deputy Chief Executive Officer under section 86.

disease has the meaning given by section 5B.

eligible corporation, in Part VIII, means a corporation in respect of which a declaration is in force under section 100.

employee has the meaning given in section 5.

Entity means:

- (a) an Agency, within the meaning of the *Public Service Act 1999*, that is not a Commonwealth authority; or
- (b) a Parliamentary Department within the meaning of the *Parliamentary Service Act 1999*; or
- (c) a person, body, organisation or group of persons prescribed for this paragraph.

excluded injury means an injury that arose out of, or in the course of, or was incidental to:

- (a) State banking not extending beyond the limits of the State concerned; or
- (b) State insurance not extending beyond the limits of the State concerned.

exempt authority means an Entity or a Commonwealth authority declared by the Minister under section 35 to be an exempt authority.

exit contribution means an exit contribution under Division 4A of Part VII.

Finance Minister means the Minister who administers the *Public Governance, Performance and Accountability Act 2013*.

household services, in relation to an employee, means services of a domestic nature (including cooking, house cleaning, laundry and gardening services) that are required for the proper running and maintenance of the employee's household.

impairment means the loss, the loss of the use, or the damage or malfunction, of any part of the body or of any bodily system or function or part of such system or function.

injury has the meaning given by section 5A.

legislative rules means rules made under section 122A.

licence means a licence under Part VIII.

licensed authority means a Commonwealth authority that is the holder of a licence that is in force.

licensed corporation means a corporation that is the holder of a licence that is in force under Part VIII.

licensee means a Commonwealth authority or a corporation that is licensed, or that is taken to be licensed, under Part VIII.

loss, in relation to property used by an employee, includes the destruction of that property.

medical treatment means:

- (a) medical or surgical treatment by, or under the supervision of, a legally qualified medical practitioner; or
- (b) therapeutic treatment obtained at the direction of a legally qualified medical practitioner; or
- (c) dental treatment by, or under the supervision of, a legally qualified dentist; or
- (d) therapeutic treatment by, or under the supervision of, a physiotherapist, osteopath, masseur or chiropractor registered under the law of a State or Territory providing for the

Section 4

registration of physiotherapists, osteopaths, masseurs or chiropractors, as the case may be; or

- (e) an examination, test or analysis carried out on, or in relation to, an employee at the request or direction of a legally qualified medical practitioner or dentist and the provision of a report in respect of such an examination, test or analysis; or
- (f) the supply, replacement or repair of an artificial limb or other artificial substitute or of a medical, surgical or other similar aid or appliance; or
- (g) treatment and maintenance as a patient at a hospital; or
- (h) nursing care, and the provision of medicines, medical and surgical supplies and curative apparatus, whether in a hospital or otherwise; or
- (i) any other form of treatment that is prescribed for the purposes of this definition.

member means a member of the Commission, including the Chairperson but not including the Chief Executive Officer.

MRCA means the *Military Rehabilitation and Compensation Act 2004*.

MRCA commencement date means the date on which section 3 of the MRCA commences.

non-economic loss, in relation to an employee who has suffered an injury resulting in a permanent impairment, means loss or damage of a non-economic kind suffered by the employee (including pain and suffering, a loss of expectation of life or a loss of the amenities or enjoyment of life) as a result of that injury or impairment and of which the employee is aware.

normal weekly earnings means the normal weekly earnings of an employee calculated under section 8.

normal weekly hours, in relation to an employee, means the average number of hours (including hours of overtime) worked in each week by the employee in his or her employment during the

relevant period as calculated for the purpose of applying the formula in subsection 8(1) or (2).

overtime includes:

- (a) any duty on shifts or on Saturdays, Sundays or other holidays; and
- (b) excess travelling time.

parent: without limiting who is a parent of a person for the purposes of this Act, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this section.

pension age has the meaning given by subsection 23(5A), (5B), (5C) or (5D) of the *Social Security Act 1991*.

permanent means likely to continue indefinitely.

place of residence, in relation to an employee, means:

- (a) the place where the employee normally resides;
- (b) a place, other than the place referred to in paragraph (a), where the employee resides temporarily, as a matter of necessity or convenience, for the purposes of his or her employment; or
- (c) any other place where the employee stays, or intends to stay, overnight, a journey to which from the employee's place of work does not substantially increase the risk of sustaining an injury when compared with the journey from his or her place of work to the place referred to in paragraph (a).

place of work, in relation to an employee, includes any place at which the employee is required to attend for the purpose of carrying out the duties of his or her employment.

pre-determination period, in relation to a claim by an employee for compensation under Division 3 of Part II, means the period from the start of the day when the employee is injured until the end of the day on which Comcare determines the claim.

Section 4

premium, in respect of an Entity or Commonwealth authority and a financial year, means:

- (a) the amount paid or payable under Division 4A of Part VII as the premium, other than a special premium, in respect of that Entity or authority and that financial year; and
- (b) if the financial year ended before 1 July 1991, any contribution so paid or payable under section 98 of the *Commonwealth Employees (Rehabilitation and Compensation) Act 1988*, as that Act applied in respect of that year.

prescribed child means:

- (a) a person under 16; or
- (b) a person who:
 - (i) is 16 or more but under 25;
 - (ii) is receiving full-time education at a school, college, university or other educational institution; and
 - (iii) is not ordinarily in employment or engaged in work on his or her own account.

previous Commission means the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees that was established under section 68 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* as amended and in force immediately before the commencement of Part 2 of the *Industrial Relations Legislation Amendment Act (No. 3) 1991*.

principal officer, in relation to a Commonwealth authority, means:

- (a) the person who constitutes, or is acting as the person who constitutes, the authority or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which he or she is present; or
- (b) if the affairs of the authority are administered or managed by a board or other group of persons—the person who is entitled to preside at any meeting of that board or other group at which he or she is present.

principal officer, in relation to a licensed corporation, means the principal executive officer of the corporation.

principal officer, in relation to an Entity, means:

- (a) if the Entity is an Agency that is not a Commonwealth authority—the Agency Head within the meaning of the *Public Service Act 1999*; or
- (b) if the Entity is a Parliamentary Department—the Secretary of the Parliamentary Department within the meaning of the *Parliamentary Service Act 1999*; or
- (c) if the Entity is a person, body, organisation or group of persons prescribed for paragraph (c) of the definition of **Entity**—the person prescribed as the principal officer.

proceeding under Part VI has the meaning given in subsection (12).

property used by an employee means an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by the employee.

rehabilitation authority, in relation to an employee, means:

- (a) where the employee is employed by an exempt authority—Comcare; and
- (b) where the employee is employed by a licensed authority—the principal officer of that authority; and
- (ba) if the employee is employed by a licensed corporation—the principal officer of that corporation; and
- (c) if the employee is employed by an Entity or a Commonwealth authority, other than an exempt authority—the principal officer of the Entity or the Commonwealth authority in which the employee is employed; and
- (d) if the employee is a member of the Defence Force—the Chief of the Defence Force.

rehabilitation program includes medical, dental, psychiatric and hospital services (whether on an in-patient or out-patient basis), physical training and exercise, physiotherapy, occupational therapy and vocational training.

Section 4

relevant authority means:

- (a) in relation to an employee who is employed by a licensee—the licensee; and
- (b) in relation to any other employee—Comcare.

relevant money has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

relevant period means the period calculated under section 9.

retirement savings account means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997*.

significant degree has the meaning given by subsection 5B(3).

special premium, in respect of an Entity or Commonwealth authority and the financial year starting on 1 July 1999, 1 July 2000 or 1 July 2001, means the amount paid or payable as a result of a determination under section 97B as a special premium in respect of that Entity or authority and that financial year.

spouse includes:

- (a) in relation to an employee or a deceased employee—a person who is, or immediately before the employee's death was, a de facto partner of the employee; and
- (b) in relation to an employee or a deceased employee who is or was a member of the Aboriginal race of Australia or a descendant of indigenous inhabitants of the Torres Strait Islands—a person who is or was recognised as the employee's husband or wife by the custom prevailing in the tribe or group to which the employee belongs or belonged.

stepchild: without limiting who is a stepchild of a person for the purposes of this Act, someone who is a child of a de facto partner of the person is the **stepchild** of the person if he or she would be the person's stepchild except that the person is not legally married to the partner.

step-parent: without limiting who is a step-parent of a person for the purposes of this Act, someone who is a de facto partner of a

parent of the person is the ***step-parent*** of the person if he or she would be the person's step-parent except that he or she is not legally married to the person's parent.

substantial interest, in relation to a body corporate, means an interest (other than a controlling interest) in the body corporate that enables the person holding the interest to cast, or control the casting of, a number of votes at a general meeting of the body corporate that is equal to or greater than the number of votes which may be cast, or whose casting may be controlled, by any other single person.

suitable employment, in relation to an employee who has suffered an injury in respect of which compensation is payable under this Act, means:

- (a) in the case of an employee who was a permanent employee of the Commonwealth or a licensee on the day on which he or she was injured and who continues to be so employed—employment by the Commonwealth or the licensed corporation, as the case may be in work for which the employee is suited having regard to:
 - (i) the employee's age, experience, training, language and other skills;
 - (ii) the employee's suitability for rehabilitation or vocational retraining;
 - (iii) where employment is available in a place that would require the employee to change his or her place of residence—whether it is reasonable to expect the employee to change his or her place of residence; and
 - (iv) any other relevant matter; and
- (b) in any other case—any employment (including self-employment), having regard to the matters specified in subparagraphs (a)(i), (ii), (iii) and (iv).

superannuation amount, in relation to a pension received by an employee in respect of a week, or a lump sum benefit received by an employee, being a pension or benefit under a superannuation scheme, means an amount equal to:

Section 4

- (a) if the scheme identifies a part of the pension or lump sum as attributable to the contributions made under the scheme by the Commonwealth, Commonwealth authority or licensed corporation—the amount of that part; or
- (b) in any other case—the amount assessed by the relevant authority to be the part of the pension or lump sum that is so attributable or, if such an assessment cannot be made, the amount of the pension received by the employee in respect of that week or the amount of the lump sum, as the case requires.

superannuation scheme means any superannuation scheme under which, or retirement savings account to which, the Commonwealth, a Commonwealth authority or a licensed corporation makes contributions on behalf of employees and includes a superannuation or provident scheme established or maintained by the Commonwealth, a Commonwealth authority or a licensed corporation.

the 1912 Act means the *Commonwealth Workmen's Compensation Act 1912*.

the 1930 Act means the *Commonwealth Employees' Compensation Act 1930*.

the 1971 Act means the *Compensation (Commonwealth Government Employees) Act 1971*.

therapeutic treatment includes an examination, test or analysis done for the purpose of diagnosing, or treatment given for the purpose of alleviating, an injury.

- (2) For the purposes of this Act, relationships (including the relationship of being family or being relatives) are taken to include (without limitation):
 - (a) relationships between de facto partners; and
 - (b) relationships of child and parent that arise:
 - (i) if someone is an exnuptial or adoptive child of a person; or

- (ii) because of the definitions of *child* and *parent* in this section; and
 - (c) relationships traced through relationships referred to in paragraphs (a) and (b).
- (3) For the purposes of this Act, any physical or mental injury or ailment suffered by an employee as a result of medical treatment of an injury shall be taken to be an injury if, but only if:
- (a) compensation is payable under this Act in respect of the injury for which the medical treatment was obtained; and
 - (b) it was reasonable for the employee to have obtained that medical treatment in the circumstances.
- Note: However, members of the Defence Force with service after the MRCA commencement date might be taken not to have suffered a physical or mental injury or ailment (see section 4AA and subsection 6A(2A)).
- (4) For the purposes of this Act, a person shall be taken to have been wholly or partly dependent on an employee at the date of the employee's death if the person would have been so dependent but for an incapacity of the employee that resulted from an injury.
- (5) For the purposes of this Act, a person who, immediately before the date of an employee's death, lived with the employee and was:
- (a) the spouse of the employee; or
 - (b) a child of the employee, being a prescribed child;
- shall be taken to be a person who was wholly dependent on the employee at that date.
- (6) For the purposes of this Act, other than subsection 17(5), a child of a deceased employee who was born alive after the employee's death shall be treated as if he or she had been born immediately before the employee's death and was wholly dependent upon the employee at the date of the employee's death.
- (7) In ascertaining, for the purposes of this Act, whether a child is or was dependent on an employee, any amount of:

Section 4

- (a) family tax benefit calculated under Part 2 or 3 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* (an individual's Part A rate); and
 - (c) carer allowance under that Act; and
 - (d) double orphan pension under that Act;
- shall not be taken into account.
- (8) A reference in this Act to an injury suffered by an employee is, unless the contrary intention appears, a reference to an injury suffered by the employee in respect of which compensation is payable under this Act.
 - (9) A reference in this Act to an incapacity for work is a reference to an incapacity suffered by an employee as a result of an injury, being:
 - (a) an incapacity to engage in any work; or
 - (b) an incapacity to engage in work at the same level at which he or she was engaged by the Commonwealth or a licensed corporation in that work or any other work immediately before the injury happened.
 - (10) For the purposes of the application of this Act in relation to an employee employed by a licensed authority, or a dependant of such a person, a reference in this Act (other than in section 28 or Part III, V, VI, VII or VIII) to Comcare is, unless the contrary intention appears, a reference to that authority.
 - (10A) For the purposes of the application of this Act in relation to an employee employed by a licensed corporation, or a dependant of such a person, a reference in this Act (except in section 28 or Part III, V, VI, VII or VIII) to Comcare is, unless the contrary intention appears, a reference to that corporation.
 - (11) A reference in this Act to a claimant is, in relation to any time after the death of the claimant, a reference to his or her legal personal representative.

Section 4AA

- (12) A reference in this Act to the institution of a proceeding under Part VI in respect of a reviewable decision is a reference to the making of an application to the Administrative Appeals Tribunal for review of that decision.
- (13) For the purposes of this Act, an employee who is under the influence of alcohol or a drug (other than a drug prescribed for the employee by a legally qualified medical practitioner or dentist and used by the employee in accordance with that prescription) shall be taken to be guilty of serious and wilful misconduct.
- (14) In spite of the definition of *principal officer* in subsection (1), if the Australian Capital Territory is, or has ceased to be, a Commonwealth authority for the purposes of this Act, the following rules have effect:
- (a) if there is in force a written declaration by the Minister, made at the written request of the Chief Minister for the Territory, that a specified person is to be taken to be the principal officer of the Territory, this Act has effect accordingly;
 - (b) if there is no such declaration in force, the Chief Minister of the Territory is to be taken to be the principal officer of the Territory.
- (15) If:
- (a) a body corporate ceases to be a Commonwealth authority;
and
 - (b) the body corporate continues in existence;
- the *principal officer* of the body corporate is to be determined as if the body corporate had not ceased to be a Commonwealth authority.

4AA Most injuries for members of the Defence Force no longer covered by this Act

- (1) For the purposes of this Act (other than this section), an employee is taken not to have suffered an injury, or an aggravation of an injury, if:

Section 4AA

- (a) the employee is a member (within the meaning of the MRCA); and
- (b) the injury or aggravation is first suffered on or after the MRCA commencement date; and
- (c) the injury or aggravation arises out of, or in the course of, the employee's employment as a member; and
- (d) the employment occurs either:
 - (i) on or after the MRCA commencement date; or
 - (ii) before, and on or after, the MRCA commencement date.

Note: After the MRCA commencement date, compensation for members of the Defence Force is provided under the MRCA (instead of this Act) for such an injury or aggravation.

- (2) An employee is taken not to have suffered an injury, being a disease, or an aggravation of a disease, if:
 - (a) the employee is a member (within the meaning of the MRCA); and
 - (b) the disease or aggravation is contracted on or after the MRCA commencement date; and
 - (c) the disease or aggravation is contributed to in a material degree by the employee's employment as a member; and
 - (d) the employment occurs either:
 - (i) on or after the MRCA commencement date; or
 - (ii) before, and on or after, the MRCA commencement date.

Note: After the MRCA commencement date, compensation for members of the Defence Force is provided under the MRCA (instead of this Act) for such a disease or aggravation.

- (3) To avoid doubt, employment occurs, before, and on or after, the MRCA commencement date whether the employment spans the commencement date or occurs during separate periods before and on or after that date.
- (4) Subsection 7(4) does not apply in determining the day on which a disease is contracted or aggravated for the purposes of paragraph (2)(b).

4A Declaration that ACT a Commonwealth authority

- (1) If the Chief Minister for the Australian Capital Territory so requests in writing, the Minister may, in writing, declare the Australian Capital Territory to be a Commonwealth authority for the purposes of this Act.
- (2) The Minister may revoke a declaration under subsection (1).
- (3) The Minister may only revoke a declaration if either:
 - (a) the Minister has given the Chief Minister at least 12 months' notice in writing of his or her intention to revoke the declaration; or
 - (b) the Chief Minister has given the Minister a written request that the declaration be revoked and:
 - (i) a period of at least 12 months; or
 - (ii) such shorter period as is agreed on by the Minister and the Chief Minister;has elapsed since the request was given to the Minister.

5 Employees

- (1) In this Act, unless the contrary intention appears:

Chief Minister means the Chief Minister for the Australian Capital Territory.

employee means:

- (a) a person who is employed by the Commonwealth or by a Commonwealth authority, whether the person is so employed under a law of the Commonwealth or of a Territory or under a contract of service or apprenticeship; or
 - (b) a person who is employed by a licensed corporation.
- (1A) For the purposes of paragraph (b) of the definition of **employee** in subsection (1), a person is taken to be employed by a licensed corporation if, and only if:
- (a) a person performs work for that corporation under a law or a contract; and

Section 5

- (b) pursuant to that law or pursuant to the law that is the proper law of that contract, as the case may be, the person would, if that corporation were not a licensed corporation, be entitled to compensation in respect of injury, loss or damage suffered by, or in respect of the death of, the person in connection with that work.
- (2) Without limiting the generality of subsection (1):
- (a) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee (all within the meaning of the *Australian Federal Police Act 1979*); or
- (b) a member of the Defence Force; or
- (c) a person (other than a person to whom subsection (3) applies) who is the holder of or is acting in:
- (i) an office established by a law of the Commonwealth, other than an office that is declared by the Minister, by legislative instrument, to be an office to which this Act does not apply; or
- (ii) an office that is established by a law of a Territory (other than an ACT enactment or a law of the Northern Territory) and is declared by the Minister, by legislative instrument, to be an office to which this Act applies;
- shall, for the purposes of this Act, be taken to be employed by the Commonwealth, and the person's employment shall, for those purposes, be taken to be constituted by the person's performance of duties as the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee, by the person's performance of duties as such a member of the Defence Force or by the person's performance of the duties of that office, as the case may be.
- Note: However, members of the Defence Force with service after the MRCA commencement date might only be entitled to compensation under the MRCA and not this Act (see section 4AA and subsection 6A(2A) of this Act).
- (3) A person who:

- (a) constitutes, or is acting as the person constituting, a Commonwealth authority;
- (b) is, or is acting as, a member of such an authority; or
- (c) is a deputy of such a member;

shall, for the purposes of this Act, be taken to be employed by that authority, and the person's employment shall, for those purposes, be taken to be constituted by the performance of:

- (d) the duties of the authority;
- (e) the person's duties as such a member or acting member; or
- (f) the person's duties as such a deputy;

as the case may be.

(4) A person:

- (a) who is ordinarily engaged for employment at a prearranged place at which employers engage persons for employment; and
- (b) whose last employer under an engagement at that place was the Commonwealth, a Commonwealth authority or a licensed corporation;

shall, for the purposes of this Act, be taken to be employed by the Commonwealth, that authority or that corporation, as the case may be, until the person is next engaged under such an engagement, and the person's employment shall, for those purposes, be taken to be constituted by the person's attendance at that place for the purpose of seeking such an engagement.

- (5) Subsection (4) does not operate to make Comcare liable to pay compensation in respect of an injury sustained by an employee during an attendance to which that subsection applies if the injury was sustained because the employee voluntarily and unreasonably subjected himself or herself to an abnormal risk of injury.
- (6) The Minister may, by legislative instrument (the *notice*), declare:
 - (a) that persons specified in the notice, being persons who engage in activities or perform acts:
 - (i) at the request or direction, for the benefit, or under a requirement made by or under a law, of the

Section 5

- Commonwealth; or
- (ii) at the request or direction, or for the benefit, of a Commonwealth authority or a licensed corporation; shall, for the purposes of this Act, be taken to be employed by the Commonwealth, or by that authority or corporation, as the case may be; and
- (b) that the employment of the person shall, for those purposes, be taken to be constituted by the performance by the person of such acts as are specified in the notice;
- and such a declaration shall have effect accordingly.
- (6A) Without limiting subsection (6), the Minister may, by legislative instrument (the *notice*), declare:
- (a) that persons specified in the notice, being persons who:
- (i) hold an honorary rank in the Defence Force before the MRCA commencement date; or
- (ii) are, before the MRCA commencement date, members of a philanthropic organisation that provides services to the Defence Force; or
- (iii) undertake resettlement training, before the MRCA commencement date, under an arrangement made by the Defence Force;
- are, for the purposes of this Act, taken to be employed by the Commonwealth; and
- (b) that such persons' employment is, for those purposes, taken to be constituted by the performance by those persons of such acts as are specified in the notice;
- and such a declaration has effect accordingly.
- Note: Declarations in respect of these kinds of people can be made under the MRCA for service after the MRCA commencement date (see section 8 of the MRCA).
- (7) For the purposes of the application of this Act in relation to a person employed by a Commonwealth authority, references in this Act to the Commonwealth shall be read as references to that authority.
- (8) This Act does not apply to:

- (a) a member of the Parliament or a Minister of State;
 - (b) a person who is a Judge as defined by section 4 of the *Judges' Pensions Act 1968*;
 - (c) an officer or employee of the Public Service of an external Territory; or
 - (d) a seaman to whom the *Seafarers Rehabilitation and Compensation Act 1992* applies.
- (9) A reference to an employee in a provision of this Act that applies to an employee at a time after Comcare, an administering authority, a licensed authority or a licensed corporation has incurred a liability in relation to the employee under this Act includes, unless the contrary intention appears, a reference to a person who has ceased to be an employee.
- (10) Subject to subsections (10A), (10B), (10C) and (10D), this Act does not apply in relation to service of a member of the Defence Force in respect of which provision for the payment of pension is made by:
- (a) the *Veterans' Entitlements Act 1986*; or
 - (b) the *Papua New Guinea (Members of the Forces Benefits) Act 1957*.
- Note: Compensation and other benefits might also be available for a member of the Defence Force under the MRCA. Generally, an injury, disease or death that is covered by that Act would not be covered by this Act (see section 4AA and subsection 6A(2A) of this Act).
- (10A) Subsection (10) does not apply in relation to a veteran:
- (a) who has rendered operational service on or after the day on which the *Military Compensation Act 1994* commences; and
 - (b) for whom provision for the payment of pension in respect of service rendered by the person is made by Part II of the *Veterans' Entitlements Act 1986*.
- (10B) Subsection (10) does not apply in relation to a member of the Defence Force who has rendered service in respect of which provision for the payment of pension is made by Part IV of the *Veterans' Entitlements Act 1986*.

Section 5

- (10C) Despite subsection (10), this Act applies to a claim lodged before the commencement of this subsection for compensation in respect of an injury of a member of the Defence Force that arose out of, or in the course of, any service that:
- (a) the member rendered before 13 May 1997; but
 - (b) only became on that day service in respect of which provision for the payment of pension is made by the *Veterans' Entitlements Act 1986* (because of the amendments made to that Act by Part 1 or 8 of Schedule 1 to the *Veterans' Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997*).
- (10D) Despite subsection (10), this Act applies to a claim lodged before the commencement of this subsection for compensation in respect of an injury of a member of the Defence Force that arose out of, or in the course of, service that:
- (a) was rendered by the member; and
 - (b) is taken under section 6DB of the *Veterans' Entitlements Act 1986* to have been rendered as operational service.
- Note: Part II of that Act provides for payment of pension in respect of that service.
- (11) For the purposes of this Act, the following are taken to be employed by the Australian Capital Territory:
- (a) a person who is an officer or employee of an authority or body established by an ACT enactment, other than an authority or body in respect of which a declaration is in force under subsection (12);
 - (b) a person who is an officer or employee of a body corporate incorporated under a law of the Commonwealth or a law in force in a State or Territory, being a body:
 - (i) in which the Australian Capital Territory or an authority or body established by an ACT enactment has a controlling interest; and
 - (ii) in respect of which a declaration under subsection (13) is in force;

- (c) a person who is an officer or employee of a body corporate incorporated under a law of the Commonwealth or a law in force in a State or Territory, being a body:
 - (i) in which a body corporate referred to in paragraph (b) has a controlling interest; and
 - (ii) in respect of which a declaration under subsection (13) is in force;
 - (d) a person who is employed under the *Legislative Assembly (Members' Staff) Act 1989* of the Australian Capital Territory;
 - (e) the Commissioner, Deputy Commissioner and members of the Australian Capital Territory Fire Brigade under the *Fire Brigade (Administration) Act 1974* of the Australian Capital Territory;
 - (f) a person who holds, or is acting in, an office established by an ACT enactment, other than an office in respect of which a declaration is in force under subsection (12).
- (12) If the Chief Minister so requests in writing, the Minister may, by legislative instrument, declare that:
- (a) an authority or body is not an authority or body to which subsection (11) applies; or
 - (b) an office is not an office to which subsection (11) applies.
- (13) If the Chief Minister so requests in writing, the Minister may make a written declaration that a body corporate is a body to which subsection (11) applies.
- (13A) A declaration under subsection (13) is not a legislative instrument.
- (14) Subsection (11) does not apply to the following offices established by the *Australian Capital Territory (Self-Government) Act 1988*:
- (a) Chief Minister for the Australian Capital Territory;
 - (b) Deputy Chief Minister for the Australian Capital Territory;
 - (c) Minister;
 - (d) Presiding Officer of the Legislative Assembly for the Australian Capital Territory;

Section 5A

- (e) deputy to the Presiding Officer of the Legislative Assembly for the Australian Capital Territory;
 - (f) member of the Legislative Assembly for the Australian Capital Territory.
- (15) If the Chief Minister so requests in writing, the Minister may make a written declaration that persons specified in the declaration, when engaging in activities:
- (a) at the request or direction, or for the benefit, of the Australian Capital Territory; or
 - (b) in accordance with a requirement made by or under an ACT enactment; or
 - (c) at the request or direction, or for the benefit, of an authority or body established by an ACT enactment;
- are to be taken to be employees of the Australian Capital Territory.
- (16) A declaration under subsection (15) is not a legislative instrument.

5A Definition of *injury*

- (1) In this Act:

injury means:

- (a) a disease suffered by an employee; or
- (b) an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee's employment; or
- (c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee's employment), that is an aggravation that arose out of, or in the course of, that employment;

but does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment.

- (2) For the purposes of subsection (1) and without limiting that subsection, ***reasonable administrative action*** is taken to include the following:
- (a) a reasonable appraisal of the employee's performance;
 - (b) a reasonable counselling action (whether formal or informal) taken in respect of the employee's employment;
 - (c) a reasonable suspension action in respect of the employee's employment;
 - (d) a reasonable disciplinary action (whether formal or informal) taken in respect of the employee's employment;
 - (e) anything reasonable done in connection with an action mentioned in paragraph (a), (b), (c) or (d);
 - (f) anything reasonable done in connection with the employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in connection with his or her employment.

5B Definition of *disease*

- (1) In this Act:

disease means:

- (a) an ailment suffered by an employee; or
- (b) an aggravation of such an ailment;

that was contributed to, to a significant degree, by the employee's employment by the Commonwealth or a licensee.

- (2) In determining whether an ailment or aggravation was contributed to, to a significant degree, by an employee's employment by the Commonwealth or a licensee, the following matters may be taken into account:
- (a) the duration of the employment;
 - (b) the nature of, and particular tasks involved in, the employment;
 - (c) any predisposition of the employee to the ailment or aggravation;
 - (d) any activities of the employee not related to the employment;

Section 6

(e) any other matters affecting the employee's health.

This subsection does not limit the matters that may be taken into account.

(3) In this Act:

significant degree means a degree that is substantially more than material.

6 Injury arising out of or in the course of employment

- (1) Without limiting the circumstances in which an injury to an employee may be treated as having arisen out of, or in the course of, his or her employment, an injury shall, for the purposes of this Act, be treated as having so arisen if it was sustained:
- (a) as a result of an act of violence that would not have occurred but for the employee's employment or the performance by the employee of the duties or functions of his or her employment; or
 - (b) while the employee was at the employee's place of work, for the purposes of that employment, or was temporarily absent from that place during an ordinary recess in that employment; or
 - (c) while the employee was temporarily absent from the employee's place of work undertaking an activity:
 - (i) associated with the employee's employment; or
 - (ii) at the direction or request of the Commonwealth or a licensee; or
 - (d) while the employee was, at the direction or request of the Commonwealth or a licensee, travelling for the purpose of that employment; or
 - (e) while the employee was at a place of education, except while on leave without pay, in accordance with:
 - (i) a condition of the employee's employment by the Commonwealth or a licensee; or
 - (ii) a request or direction of the Commonwealth or a licensee; or

- (iii) the approval of the Commonwealth or a licensee; or
- (ea) while the employee was travelling between the employee's place of work and a place of education for the purpose of attending that place in accordance with:
 - (i) a condition of the employee's employment by the Commonwealth or a licensee; or
 - (ii) a request or direction of the Commonwealth or a licensee; or
 - (iii) the approval of the Commonwealth or a licensee; or
- (f) while the employee was at a place for the purpose of:
 - (i) obtaining a medical certificate for the purposes of this Act; or
 - (ii) receiving medical treatment for an injury; or
 - (iii) undergoing a rehabilitation program provided under this Act; or
 - (iv) receiving a payment of compensation under this Act; or
 - (v) undergoing a medical examination or rehabilitation assessment in accordance with a requirement made under this Act; or
 - (vi) receiving money due to the employee under the terms of his or her employment, being money that, under the terms of that employment or any agreement or arrangement between the employee and the Commonwealth or a licensee, is available, or reasonably expected by the employee to be available, for collection at that place; or
- (g) while the employee was travelling between the employee's place of work and another place for the purpose of:
 - (i) obtaining a medical certificate for the purposes of this Act; or
 - (ii) receiving medical treatment for an injury; or
 - (iii) undergoing a rehabilitation program provided under this Act; or
 - (iv) undergoing a medical examination or rehabilitation assessment in accordance with a requirement made under this Act; or

Section 6

- (h) while the employee was, at the direction or request of the Commonwealth or a licensee, at a place:
 - (i) outside Australia and the external Territories; and
 - (ii) declared by the Minister by legislative instrument to be a place to which this paragraph applies; or
 - (i) while the employee was:
 - (i) at the direction or request of the Commonwealth or a licensee, at a place outside Australia and the external Territories; and
 - (ii) a member of a class of employees declared by the Minister by legislative instrument to be a class to which this paragraph applies.
- (1A) For the purposes of this section:
- (a) a journey from a place of residence is taken to start at the boundary of the land where the place of residence is situated; or
 - (b) a journey to such a place of residence is taken to end at that boundary.
- (1B) If an employee owns or occupies a parcel of land contiguous with the land on which the employee's residence is situated, the boundary referred to in subsection (1A) is the external boundary of all of the contiguous parcels of land if treated as a single parcel.
- (1C) For the purposes of paragraph (1)(d), travel between the employee's residence and the employee's usual place of work is taken not to be at the direction or request of the Commonwealth or a licensee.
- (2) In paragraph (1)(d), the reference to the employee travelling does not include a reference to travelling to or from a place mentioned in paragraph (1)(e) or (f).
- (3) Subsection (1) does not apply where an employee sustains an injury:
- (a) while at a place referred to in that subsection; or
 - (b) during an ordinary recess in his or her employment;

if the employee sustained the injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury.

6A Injury arising out of or in the course of employment—extended operation

- (1) This section applies to the following employees:
 - (a) members of the Defence Force;
 - (b) members of the Australian Defence Force Cadets;
 - (e) persons declared by the Minister under subsection 5(6A).
- (2) If, at any time, whether before, on, or after, 1 December 1988:
 - (a) an employee to whom this section applies received or receives medical treatment paid for by the Commonwealth; and
 - (b) as an unintended consequence of that treatment the person suffered or suffers an injury;the injury to the employee is taken to have arisen out of, or in the course of, the person's employment, whether or not the person has remained an employee to whom this section applies.
- (2A) However, subsection (2) does not apply if:
 - (a) the employee is a member (within the meaning of the MRCA); and
 - (b) the injury or aggravation is first suffered on or after the MRCA commencement date; and
 - (c) the injury or aggravation is suffered as an unintended consequence of medical treatment paid for by the Commonwealth; and
 - (d) the treatment is provided either:
 - (i) on or after the MRCA commencement date; or
 - (ii) before, and on or after, the MRCA commencement date (whether the treatment spans the commencement date or is provided during separate periods before and on or after that date).

Note: After the MRCA commencement date, compensation for members of the Defence Force is provided under the MRCA (instead of this Act)

Section 7

for such an injury or aggravation.

- (3) Subsection (2) applies whether or not the original condition that was being treated was compensable under this Act.

7 Provisions relating to diseases

- (1) Where:
- (a) an employee has suffered, or is suffering, from a disease or the death of an employee results from a disease;
 - (b) the disease is of a kind specified by the Minister, by legislative instrument, as a disease related to employment of a kind specified in the instrument; and
 - (c) the employee was, at any time before symptoms of the disease first became apparent, engaged by the Commonwealth or a licensed corporation in employment of that kind;
- the employment in which the employee was so engaged shall, for the purposes of this Act, be taken to have contributed, to a significant degree, to the contraction of the disease, unless the contrary is established.
- (2) Where an employee contracts a disease, any employment in which he or she was engaged by the Commonwealth or a licensed corporation at any time before symptoms of the disease first became apparent shall, unless the contrary is established, be taken, for the purposes of this Act, to have contributed, to a significant degree, to the contraction of the disease if the incidence of that disease among persons who have engaged in such employment is significantly greater than the incidence of the disease among persons who have engaged in other employment in the place where the employee is ordinarily employed.
- (3) Where an employee suffers an aggravation of a disease, any employment in which he or she was engaged by the Commonwealth or a licensed corporation at any time before symptoms of the aggravation first became apparent shall, unless the contrary is established, be taken, for the purposes of this Act, to have contributed, to a significant degree, to the aggravation if the

incidence of the aggravation of that disease among persons suffering from it who have engaged in such employment is significantly greater than the incidence of the aggravation of that disease among persons suffering from it who have engaged in other employment in the place where the employee was ordinarily employed.

- (4) For the purposes of this Act, an employee shall be taken to have sustained an injury, being a disease, or an aggravation of a disease, on the day when:
- (a) the employee first sought medical treatment for the disease, or aggravation; or
 - (b) the disease or aggravation resulted in the death of the employee or first resulted in the incapacity for work, or impairment of the employee;
- whichever happens first.
- (5) The death of an employee shall be taken, for the purposes of this Act, to have resulted from a disease or an aggravation of a disease, if, but for that disease or aggravation, as the case may be, the death of the employee would have occurred at a significantly later time.
- (6) An incapacity for work or impairment of an employee shall be taken, for the purposes of this Act, to have resulted from a disease, or an aggravation of a disease, if, but for that disease or aggravation, as the case may be:
- (a) the incapacity or impairment would not have occurred;
 - (b) the incapacity would have commenced, or the impairment would have occurred, at a significantly later time; or
 - (c) the extent of the incapacity or impairment would have been significantly less.
- (7) A disease suffered by an employee, or an aggravation of such a disease, shall not be taken to be an injury to the employee for the purposes of this Act if the employee has at any time, for purposes connected with his or her employment or proposed employment by the Commonwealth or a licensed corporation, made a wilful and false representation that he or she did not suffer, or had not previously suffered, from that disease.
-

Section 7

- (8) If an employee:
- (a) suffers a disease mentioned in the following table; and
 - (b) before the disease was sustained, was employed as a firefighter for the qualifying period mentioned for that disease; and
 - (c) was exposed to the hazards of a fire scene during that period; and
 - (d) in the case of a cancer of a kind covered by item 13 of the following table—satisfies the conditions (if any) prescribed for such a cancer;
- the employment is, for the purposes of this Act, taken to have contributed, to a significant degree, to the contraction of the disease, unless the contrary is established.

Item	Disease	Qualifying period
1	Primary site brain cancer	5 years
2	Primary site bladder cancer	15 years
3	Primary site kidney cancer	15 years
4	Primary non-Hodgkins lymphoma	15 years
5	Primary leukemia	5 years
6	Primary site breast cancer	10 years
7	Primary site testicular cancer	10 years
8	Multiple myeloma	15 years
9	Primary site prostate cancer	15 years
10	Primary site ureter cancer	15 years
11	Primary site colorectal cancer	15 years
12	Primary site oesophageal cancer	25 years
13	A cancer of a kind prescribed for this table	The period prescribed for such a cancer

- (9) For the purposes of subsection (8):

- (a) an employee is taken to have been employed as a firefighter if firefighting duties made up a substantial portion of his or her duties; and
 - (b) an employee who was employed as a firefighter for 2 or more periods that add up to the qualifying period is taken to have been so employed for the qualifying period; and
 - (c) an employee is taken to have been employed as a firefighter only if he or she was (disregarding the effect of any declarations under subsection 5(15)) employed as a firefighter by the Commonwealth, a Commonwealth authority or a licensed corporation.
- (10) Subsection (8) does not limit, and is not limited by, subsections (1) and (2).

8 Normal weekly earnings

- (1) For the purposes of this Act, the normal weekly earnings of an employee (other than an employee referred to in subsection (2)) before an injury shall be calculated in relation to the relevant period under the formula:

$$(NH \times RP) + A$$

where:

NH is the average number of hours worked in each week by the employee in his or her employment during the relevant period;

RP is the employee's average hourly ordinary time rate of pay during that period; and

A is the average amount of any allowance payable to the employee in each week in respect of his or her employment during the relevant period, other than an allowance payable in respect of special expenses incurred, or likely to be incurred, by the employee in respect of that employment.

- (2) Where an employee is required to work overtime on a regular basis, the normal weekly earnings of the employee before an injury

Section 8

shall be the amount calculated in accordance with subsection (1) plus an additional amount calculated in relation to the relevant period under the formula:

$$NH \times OR$$

where:

NH is the average number of hours of overtime worked in each week by the employee in his or her employment during the relevant period; and

OR is the employee's average hourly overtime rate of pay during that period.

- (3) Where an employee was, at the date of the injury, employed by the Commonwealth or a licensed corporation in part-time employment or unpaid employment, any earnings of the employee from any other employment shall, for the purposes of this section, be treated as earnings of the employee from his or her employment by the Commonwealth or the licensed corporation.
- (4) Where, because of the shortness of the relevant period, it is impracticable to calculate the normal weekly earnings of an employee before an injury under subsection (1) or (2), the normal weekly earnings of the employee before the date of injury shall be taken to be the normal weekly earnings before that date of another employee performing comparable work, being normal weekly earnings from employment by the Commonwealth or a licensed corporation and calculated under subsection (1) or (2), as the case requires.
- (5) Where, because of the shortness of the relevant period, the normal weekly earnings as calculated in relation to the relevant period under subsection (1) or (2) would not fairly represent the weekly rate at which the employee was being paid in respect of his or her employment before the injury, the normal weekly earnings before the date of the injury shall be calculated in relation to such other period as Comcare considers reasonable for the purpose of arriving

at an amount that does fairly represent the weekly rate at which the employee was being so paid.

- (6) Subject to this section, if the minimum amount per week payable to an employee in respect of his or her employment by the Commonwealth or a licensed corporation at the date of the injury is increased, or would have been increased if the employee had continued in that employment, because of:
- (a) the attainment by the employee of a particular age;
 - (b) the completion by the employee of a particular period of service; or
 - (c) the receipt by the employee of an increase in salary, wages or pay by way of an increment in a range of salary, wages or pay applicable to the employee or to his or her office, position or appointment;

the normal weekly earnings of the employee before the injury, as calculated under the preceding subsections, shall be increased by the same percentage as the percentage by which that minimum amount per week is increased, or would have been increased, as the case may be.

- (7) Subject to this section, if:
- (a) an employee continues to be employed by the Commonwealth or a licensed corporation after the date of an injury; and
 - (b) the minimum amount per week payable to the employee in respect of that employment is increased because of the promotion of the employee;

the normal weekly earnings of the employee before the injury, as calculated under the preceding subsections, shall be increased by the same percentage as the percentage by which that minimum amount per week is increased.

- (8) Subject to this section, where:
- (a) the employment of an employee is of a kind referred to in subsection 5(4) or (6) or subsection (3) of this section; and
 - (b) the employee is not receiving earnings from any other employment at the date of the injury;

Section 8

the normal weekly earnings of the employee before the injury shall be an amount determined by Comcare to be the amount per week that the employee would have been able to earn at the date of the injury (including any amount in respect of overtime worked on a regular basis) if he or she had engaged in suitable paid employment.

- (9) The normal weekly earnings of an employee before the date of the employee's injury, as calculated under the preceding subsections, must, while the employee continues to be employed by the Commonwealth or a licensed corporation, be increased or reduced by the relevant percentage.
- (9A) For the purposes of subsection (9), *relevant percentage* means the same percentage as the percentage of increase or reduction in the minimum amount per week payable in respect of employees included in a class of employees of which the employee was a member at the date of the injury as a result of:
- (a) the operation of a law of the Commonwealth or of a State or Territory; or
 - (b) the making, alteration or operation of an award, order, determination or industrial agreement or the doing of any other act or thing, under such a law.
- (9B) The normal weekly earnings of an employee before injury, as calculated under subsections (1) to (8) and as increased or reduced under subsection (9) must, if the employee has ceased, or ceases, to be employed by the Commonwealth or a licensed corporation, be further increased, with effect from each indexation date in relation to that cessation, by reference to the percentage of increase (if any) of an index that is prescribed for the purposes of this subsection over the year ending on the 31 December preceding each such indexation date.
- (9C) For the purpose of subsection (9B), the *indexation date*, in relation to a cessation of employment, is:
- (a) the 1 July next following:
 - (i) the date on which this Act receives the Royal Assent; or
 - (ii) the date of that cessation of employment;

whichever last occurs; and

- (b) each subsequent 1 July.
- (9D) For the purpose of subsection (9B), the regulations may specify the manner of calculating the further increase referred to in that subsection by reference to the movement of the index that is prescribed for the purposes of that subsection.
- (9E) The normal weekly earnings of an employee before an injury, as calculated under the preceding subsections, must, with effect from 1 July in each year, be further increased by the amount under subsection (9F) if, in the 12 months immediately preceding that 1 July:
- (a) there was no increase in those earnings under subsection (6), (7) or (9); and
 - (b) there was no reduction in those earnings under subsection (9).
- (9F) If the normal weekly earnings of an employee before an injury must be increased because of subsection (9E), the amount by which they are increased is the percentage of increase (if any) in the index prescribed by the regulations for the purposes of this subsection over the period of 12 months ending on the 31 December immediately before the relevant 1 July.
- (9G) For the purposes of subsection (9F), the regulations may specify the manner of calculating the further increase mentioned in that subsection by reference to the movement of the index that is prescribed for the purposes of that subsection.
- (10) If the amount of the normal weekly earnings of an employee before an injury, as calculated under the preceding subsections, would exceed:
- (a) where the employee continues to be employed by the Commonwealth or a licensed corporation—the amount per week of the earnings that the employee would receive if he or she were not incapacitated for work; or

Section 9

- (b) where the employee has ceased to be employed by the Commonwealth or a licensed corporation—whichever is the greater of the following amounts:
 - (i) the amount per week of the earnings that the employee would receive if he or she had continued to be employed by the Commonwealth or the licensed corporation in the employment in which he or she was engaged at the date of the injury;
 - (ii) the amount per week of the earnings that the employee would receive if he or she had continued to be employed by the Commonwealth or the licensed corporation in the employment in which he or she was engaged at the date on which the employment by the Commonwealth or the licensed corporation ceased;

the amount so calculated shall be reduced by the amount of the excess.

9 Relevant period

- (1) For the purposes of calculating the normal weekly earnings of an employee before an injury, a reference in section 8 to the relevant period is, subject to this section, a reference to the latest period of 2 weeks before the date of the injury during which the employee was continuously employed by the Commonwealth or a licensed corporation.
- (2) Subject to subsection (3), if, during the period referred to in subsection (1), the minimum amount per week payable to an employee in respect of his or her employment by the Commonwealth or a licensed corporation was varied as a result of:
 - (a) the operation of a law of the Commonwealth or of a State or Territory; or
 - (b) the making, alteration or operation of an award, order, determination or industrial agreement, or the doing of any other act or thing, under such a law;any part of that period that occurred before the variation, or last variation, took place shall be disregarded for the purposes of calculating the relevant period.

- (3) Where in any case the application of subsection (2) would require that a period be disregarded for the purposes of calculating the relevant period in relation to an employee, and as a result of disregarding that period:
- (a) it would be impracticable to calculate under section 8 the normal weekly earnings of the employee before an injury; or
 - (b) the normal weekly earnings as so calculated would not fairly represent the weekly rate at which the employee was being paid in respect of his or her employment by the Commonwealth or a licensed corporation before the injury;
- subsection (2) shall not apply in that case, but the normal weekly earnings of the employee during that period shall be taken to be the amount that would have been his or her normal weekly earnings during that period if the variation had taken effect at the beginning of that period.
- (4) If, during any part of the period calculated under the preceding subsections, the employee's earnings were reduced, or the employee did not receive any earnings, because of absence from his or her employment for any reason, that part of that period shall be disregarded for the purposes of calculating the relevant period.

10 Recovery of damages

For the purposes of this Act, damages shall be taken to have been recovered by an employee, or by or for the benefit of a dependant of a deceased employee, when the amount of the damages was paid to or for the benefit of the employee or dependant, as the case may be.

11 Liability of relevant authority

The liability of a relevant authority to pay compensation to a person under this Act is the liability of that authority to pay to the person such amount or amounts as are determined by that authority to be payable to the person under this Act.

Section 12

12 Amounts of compensation

An amount of compensation payable under a provision of this Act in respect of an injury is, unless the contrary intention appears, in addition to an amount of compensation paid or payable under any other provision of this Act in respect of that injury.

13 Indexation—Consumer Price Index

(1) In this section:

index number, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

relevant amount means the amount specified in paragraph 18(4)(a) or subsection 19(7), (8) or (9), 24(9), 27(2), 29(1) or (3), 30(1) or 137(1).

relevant year means the period of 12 months commencing on 1 July 1988 and each subsequent period of 12 months.

- (2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this section.
- (3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the index reference period for the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard shall be had only to the index number published in terms of the new index reference period.
- (4) Where the factor ascertained under subsection (5) in relation to a relevant year is greater than one, this Act has effect as if for each

relevant amount there were substituted, on the first day of that relevant year, an amount calculated by multiplying by that factor:

- (a) if, by virtue of another application or other applications of this section, this Act has effect as if another amount or amounts were substituted for the relevant amount—the substituted amount or the last substituted amount; or
 - (b) in any other case—the relevant amount.
- (5) The factor to be ascertained for the purposes of subsection (4) in relation to a relevant year is the number (calculated to 3 decimal places) ascertained by dividing the index number of the December quarter immediately before the relevant year by the index number for the December quarter immediately before that first-mentioned December quarter.
- (6) Where the factor ascertained under subsection (5) in relation to a relevant year would, if it were calculated to 4 decimal places, end with a number greater than 4, the factor ascertained under that subsection in relation to that relevant year shall be taken to be the factor calculated to 3 decimal places in accordance with that subsection and increased by 0.001.

13AA Indexation—Wage Price Index

Definitions

- (1) In this section:

index number, in relation to a quarter, means:

- (a) the Wage Price Index (total hourly rates of pay excluding bonuses/all sectors/all Australia/original) number published by the Australian Statistician in respect of that quarter; or
- (b) if:
 - (i) a series of index numbers is prescribed for the purposes of this paragraph; and
 - (ii) the Australian Statistician publishes an index number in respect of the quarter; and
 - (iii) that index number belongs to the series;

Section 13AA

that index number.

relevant amount means the amount specified in subsection 17(3), (4) or (5).

relevant year means:

- (a) the financial year starting on 1 July 2009; or
- (b) a later financial year.

Indexation

- (2) If the indexation factor for a relevant year is greater than one, this Act has effect as if for each relevant amount there were substituted, on the first day of that relevant year, an amount calculated by multiplying by that factor:
 - (a) if, because of one or more other applications of this section, this Act has effect as if another amount or amounts were substituted for the relevant amount—the substituted amount or the last substituted amount; or
 - (b) in any other case—the relevant amount.

Indexation factor

- (3) For the purposes of this section, the **indexation factor** for a relevant year is the number calculated, to 3 decimal places, using the formula:

$$\frac{\text{Index number for the reference December quarter}}{\text{Index number for the base December quarter}}$$

where:

base December quarter means the last December quarter before the reference December quarter.

reference December quarter means the last December quarter before the relevant year.

- (4) If the number calculated under subsection (3) for a relevant year would, if it were calculated to 4 decimal places, end with a number greater than 4, the number so calculated is increased by 0.001.

Other provisions

- (5) Subject to subsection (6), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number for a quarter in substitution for an index number previously published for that quarter, the publication of the later index number is to be disregarded for the purposes of this section.
- (6) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the index reference period for:
- (a) the Wage Price Index; or
 - (b) another index;
- then, for the purposes of the application of this section after the change took place or takes place, regard is to be had only to the index number published in terms of the new index reference period.

13A Application of *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part II Compensation

Division 1 Injuries, property loss or damage, medical expenses

Section 14

Part II—Compensation

Division 1—Injuries, property loss or damage, medical expenses

14 Compensation for injuries

- (1) Subject to this Part, Comcare is liable to pay compensation in accordance with this Act in respect of an injury suffered by an employee if the injury results in death, incapacity for work, or impairment.
- (2) Compensation is not payable in respect of an injury that is intentionally self-inflicted.
- (3) Compensation is not payable in respect of an injury that is caused by the serious and wilful misconduct of the employee but is not intentionally self-inflicted, unless the injury results in death, or serious and permanent impairment.

15 Compensation for loss of or damage to property used by employee

- (1) If:
 - (a) an employee has an accident arising out of and in the course of his or her employment by the Commonwealth or a licensed corporation; and
 - (b) the accident does not cause injury to the employee but results in the loss of, or damage to, property used by the employee;Comcare is liable to pay compensation to the employee of an amount equal to the amount of the expenditure reasonably incurred by the employee in the necessary replacement or repair of the property.

Note: However, members of the Defence Force with service after the MRCA commencement date might only be entitled to compensation under the MRCA and not this Act (see section 15A).

- (2) For the purposes of subsection (1), expenditure incurred by an employee in the necessary replacement or repair of property used by the employee shall be taken to include any fees or charges paid or payable by the employee to a legally qualified medical practitioner or dentist or other qualified person for a consultation, examination, prescription or other service reasonably rendered in connection with the replacement or repair.
- (3) Compensation is not payable under this section if the loss or damage is attributable to the serious and wilful misconduct of the employee.

15A Most loss or damage to property used by members of the Defence Force etc. no longer covered by this Act

Loss of, or damage to, property used by an employee is taken not to have resulted from an accident arising out of, and in the course of, the employee's employment by the Commonwealth if:

- (a) the employee is a member (as defined in the MRCA); and
- (b) the loss or damage occurs on or after the MRCA commencement date; and
- (c) the loss or damage results from an accident arising out of, and in the course of, the employee's employment as a member.

Note: After the MRCA commencement date, compensation for members of the Defence Force is provided under the MRCA (instead of this Act) for such loss or damage.

16 Compensation in respect of medical expenses etc.

- (1) Where an employee suffers an injury, Comcare is liable to pay, in respect of the cost of medical treatment obtained in relation to the injury (being treatment that it was reasonable for the employee to obtain in the circumstances), compensation of such amount as Comcare determines is appropriate to that medical treatment.

Note: Compensation is not payable under this subsection in relation to certain defence-related claims (see Division 2A of Part XI).

Part II Compensation

Division 1 Injuries, property loss or damage, medical expenses

Section 16

- (2) Subsection (1) applies whether or not the injury results in death, incapacity for work, or impairment.
- (3) For the purposes of subsection (1), the cost of medical treatment shall, in a case where the treatment involves the supply, replacement or repair of property used by the employee, be deemed to include any fees or charges paid or payable by the employee to a legally qualified medical practitioner or dentist or other qualified person for a consultation, examination, prescription or other service reasonably required in connection with that supply, replacement or repair.
- (4) An amount of compensation payable by Comcare under subsection (1) is payable:
 - (a) if the employee has paid the cost of the medical treatment—to, or in accordance with the directions of, the employee; or
 - (b) if the employee dies before the compensation is paid and without having paid the cost referred to in subsection (1) and another person, not being the legal personal representative of the employee, has paid that cost—to that other person; or
 - (c) in any other case—to the person to whom the cost is payable.
- (5) Where a person is liable to pay any cost referred to in subsection (1), any amount paid under subsection (4) to the person to whom that cost is payable is, to the extent of the payment, a discharge of the liability of the first-mentioned person.
- (6) Subject to subsection (7), if:
 - (a) compensation in respect of the cost of medical treatment is payable; and
 - (b) the employee reasonably incurs expenditure in doing either or both of the following:
 - (i) making a necessary journey for the purpose of obtaining that medical treatment;
 - (ii) remaining, for the purpose of obtaining that medical treatment, at a place to which the employee has made a journey for that purpose;

Comcare is liable to pay compensation to the employee:

- (c) in respect of the journey—of an amount worked out using the formula:

Specified rate per kilometre × Number of kilometres travelled

where:

specified rate per kilometre means such rate per kilometre as the Minister specifies, by legislative instrument, under this subsection in respect of journeys to which this subsection applies.

numbers of kilometres travelled means the number of whole kilometres Comcare determines to have been the reasonable length of such a journey as it was necessary for the employee to make (including the return part of the journey).

- (d) in respect of the employee remaining for the purpose of obtaining the treatment—of an amount equal to the expenditure so reasonably incurred in remaining for that purpose.
- (7) Comcare is not liable to pay compensation under subsection (6) unless:
- (a) the reasonable length of such a journey as it was necessary for the employee to make (including the return part of the journey) exceeded 50 kilometres; or
 - (b) if the journey made by the employee involved the use of public transport or ambulance services—the employee's injury reasonably required the use of such transport or services regardless of the distance involved.
- (8) The matters to which Comcare shall have regard in deciding questions arising under subsections (6) and (7) include:
- (a) the place or places where appropriate medical treatment was available to the employee;
 - (b) the means of transport available to the employee for the journey;
 - (c) the route or routes by which the employee could have travelled; and
 - (d) the accommodation available to the employee.

Part II Compensation

Division 1 Injuries, property loss or damage, medical expenses

Section 16

(9) Where:

- (a) an employee suffers an injury;
- (b) a person has reasonably incurred expenditure in connection with the transportation of the employee, or, if the employee has died, of his or her body, from the place where the injury was sustained to a hospital or similar place, or to a mortuary; and
- (c) the employee, or the legal personal representative of the employee, does not make a claim for compensation in respect of that expenditure;

Comcare is liable to pay compensation to the person who incurred the expenditure of an amount equal to the amount of that expenditure.

Division 2—Injuries resulting in death

17 Compensation for injuries resulting in death

- (1) This section applies where an injury to an employee results in death.
- (2) Subject to this section and sections 16 and 18, if the employee dies without leaving dependants, compensation is not payable in respect of the injury.
- (3) Subject to this section and to sections 16 and 18, if the employee dies leaving dependants some or all of whom were, at the date of the employee's death, wholly dependent on the employee, Comcare is liable to pay compensation in respect of the injury of \$400,000 and that compensation is payable to, or in accordance with the directions of, Comcare for the benefit of all of those dependants.
- (4) If the employee dies without leaving dependants who were wholly dependent on the employee at the date of the employee's death but leaving dependants who were partly dependent on the employee at that date:
 - (a) subject to this section and to sections 16 and 18, Comcare is liable to pay compensation in respect of the injury of such amount, not exceeding \$400,000, as Comcare determines, having regard to any losses suffered by those dependants as a result of the cessation of the employee's earnings; and
 - (b) that compensation is payable to, or in accordance with the directions of, Comcare for the benefit of those dependants.
- (5) If:
 - (a) a prescribed child was, at the date of the injury or at the date of the employee's death, wholly or mainly dependent on the employee;
 - (b) a prescribed child, being a child of the employee, was born after the employee's death; or

Part II Compensation

Division 2 Injuries resulting in death

Section 17

- (c) a prescribed child would, if the employee had not died, have been wholly or mainly dependent on the employee;
Comcare is liable to pay compensation at the rate of \$110 a week and that compensation is payable to, or in accordance with the directions of, Comcare for the benefit of that child from the date of the employee's death or the date of the birth of the child, whichever is the later.
- (6) Compensation is not payable under subsection (5) in respect of:
- (a) any period during which the child is not a prescribed child; and
 - (b) in the case of a child referred to in paragraph (5)(c)—any period during which, if the employee had not died, the child would not have been wholly or mainly dependent upon the employee.
- (7) An amount of compensation paid or payable under this Act before the death of an employee:
- (a) is not affected by subsection (2);
 - (b) shall not be deducted from the compensation payable under subsection (3); and
 - (c) shall not be taken into account in determining the compensation payable under subsection (4).
- (8) Where an amount of compensation is payable under this section for the benefit of 2 or more dependants of the deceased employee, Comcare shall determine the shares of those dependants in that amount as Comcare thinks fit, having regard to any losses suffered by those dependants as a result of the cessation of the employee's earnings.
- (9) A reference in this section to a dependant of a deceased employee shall be read as a reference to a dependant by or on behalf of whom a claim is made for compensation under this section.
- (10) Where claims for compensation under this section are made by or on behalf of 2 or more dependants of a deceased employee, Comcare shall make one determination in respect of those claims.

18 Compensation in respect of funeral expenses

- (1) Where an injury to an employee results in death, Comcare is liable to pay compensation in respect of the cost of the employee's funeral to the person who paid the cost of the funeral or, if that cost has not been paid, to the person who carried out the funeral.
- (2) The amount of compensation is the amount, not exceeding the amount determined in accordance with subsection (4), that Comcare considers reasonable, having regard to:
 - (a) the charges ordinarily made for funerals in the place where the funeral was carried out; and
 - (b) any amount paid or payable in respect of the cost of the funeral under any other law of the Commonwealth.
- (3) Where a person is liable to pay the cost of the funeral of an employee, any amount paid under this section to the person who carried out the funeral is, to the extent of the payment, a discharge of the liability of the first-mentioned person.
- (4) The maximum amount of compensation under subsection (2) is:
 - (a) \$9,000; or
 - (b) if the regulations prescribe a higher amount—that amount.

Note: The amount of \$9,000 is indexed under section 13.

Division 3—Injuries resulting in incapacity for work

19 Compensation for injuries resulting in incapacity

- (1) This section applies to an employee who is incapacitated for work as a result of an injury, other than an employee to whom section 20, 21, 21A or 22 applies.
- (2) Subject to this Part, Comcare is liable to pay to the employee in respect of the injury, for each week that is a maximum rate compensation week during which the employee is incapacitated, an amount of compensation worked out using the formula:

$$NWE - AE$$

where:

AE is the greater of the following amounts:

- (a) the amount per week (if any) that the employee is able to earn in suitable employment;
- (b) the amount per week (if any) that the employee earns from any employment (including self-employment) that is undertaken by the employee during that week.

NWE is the amount of the employee's normal weekly earnings.

- (2A) For the purposes of subsection (2), a week is a **maximum rate compensation week**, in relation to an employee to whom this section applies, if:
 - (a) it is a week during which the employee's incapacity prevents the employee working the employee's normal weekly hours because the employee is unable to work or unable to work at the level at which the employee worked before the injury; and
 - (b) the total number of hours that the employee has been prevented from working, or working at that level, during that incapacity, in that week and in all previous weeks, if any, to

which paragraph (a) applies, does not exceed 45 times the employee's normal weekly hours.

- (2B) If, before the end of a particular week, the total of the hours that the employee has been prevented from working, or working at that level, in that week and in previous weeks, will exceed the total number of hours worked out in accordance with paragraph (2A)(b), then:
- (a) subsection (2) applies in respect of the part of the week before that total number of hours is exceeded in accordance with subsection (2C); and
 - (b) subsection (3) applies in respect of the remainder of the week in accordance with subsection (2D).
- (2C) For the purposes of paragraph (2B)(a), the compensation payable in respect of the part of the week to which that paragraph refers is an amount worked out using the formula:

$$\frac{X}{NWH} \times [NWE - AE]$$

where:

AE applies in relation to the whole of that particular week and has the same meaning as in subsection (2).

NWE is the amount of the employee's normal weekly earnings.

NWH means the number of normal weekly hours worked by the employee before his or her injury.

X is the total of the hours in that particular week:

- (a) that would have counted towards the employee's normal weekly hours (whether those hours are worked or not); and
 - (b) that elapse before the total number of hours worked out in accordance with paragraph (2A)(b) exceeds 45 times the employee's normal weekly hours.
- (2D) For the purposes of paragraph (2B)(b), the compensation payable in respect of the part of the week to which that paragraph refers is worked out using the formula:

Part II Compensation

Division 3 Injuries resulting in incapacity for work

Section 19

$$\frac{NWH - X}{NWH} \times \text{Reduced rate compensation entitlement}$$

where:

NWH means the number of normal weekly hours worked by the employee before his or her incapacity.

reduced rate compensation entitlement is the rate of compensation that would have been applicable for the whole week had subsection (3) applied throughout the whole week.

X is the total of the hours in that particular week:

- (a) that would have counted towards the employee's normal weekly hours (whether those hours are worked or not); and
 - (b) that elapse before the total number of hours worked out in accordance with paragraph (2A)(b) exceeds 45 times the employee's normal weekly hours.
- (3) Subject to this Part, Comcare is liable to pay compensation to the employee, in respect of the injury, for each week during which the employee is incapacitated, other than a week referred to in subsection (2), of an amount calculated using the formula:

$$(\text{Adjustment percentage} \times \text{NWE}) - \text{AE}$$

where:

adjustment percentage is a percentage equal to:

- (a) if the employee is not employed during that week—75%; or
- (b) if the employee is employed for 25% or less of his or her normal weekly hours during that week—80%; or
- (c) if the employee is employed for more than 25% but not more than 50% of his or her normal weekly hours during that week—85%; or
- (d) if the employee is employed for more than 50% but not more than 75% of his or her normal weekly hours during that week—90%; or

- (e) if the employee is employed for more than 75% but less than 100% of his or her normal weekly hours during that week—95%; or
- (f) if the employee is employed for 100% of his or her normal weekly hours during that week—100%.

AE applies in relation to the whole of that particular week and has the same meaning as in subsection (2).

NWE is the amount of the employee's normal weekly earnings.

(3A) If, as a result of the incapacity:

- (a) the amount per week payable to the employee in respect of his or her continued employment is reduced; and
- (b) a pension under a superannuation scheme is payable to the employee;

subsection (3) applies in relation to the employee in relation to a week during which the employee is incapacitated as if the references in the subsection to the amount he or she was able to earn during the week in suitable employment were instead references to the sum of that amount and any amount of the pension referred to in paragraph (b) that is payable to the employee in respect of that week.

(4) In determining, for the purposes of subsections (2) and (3), the amount per week that an employee is able to earn in suitable employment, Comcare shall have regard to:

- (a) where the employee is in employment (including self-employment)—the amount per week that the employee is earning in that employment;
- (b) where, after becoming incapacitated for work, the employee received an offer of suitable employment and failed to accept that offer—the amount per week that the employee would be earning in that employment if he or she were engaged in that employment;
- (c) where, after becoming incapacitated for work, the employee received an offer of suitable employment and, having accepted that offer, failed to engage, or to continue to engage, in that employment—the amount per week that the employee

Part II Compensation

Division 3 Injuries resulting in incapacity for work

Section 19

- would be earning in that employment if he or she were engaged in that employment;
- (d) where, after becoming incapacitated for work, the employee received an offer of suitable employment on condition that the employee completed a reasonable rehabilitation or vocational retraining program and the employee failed to fulfil that condition—the amount that the employee would be earning in that employment if he or she were engaged in that employment;
- (e) where, after becoming incapacitated for work, the employee has failed to seek suitable employment—the amount per week that, having regard to the state of the labour-market at the relevant time, the employee could reasonably be expected to earn in such employment if he or she were engaged in such employment;
- (f) where paragraph (b), (c), (d) or (e) applies to the employee—whether the employee’s failure to accept an offer of employment, to engage, or to continue to engage, in employment, to undertake, or to complete, a rehabilitation or vocational retraining program or to seek employment, as the case may be, was, in Comcare’s opinion, reasonable in all the circumstances; and
- (g) any other matter that Comcare considers relevant.
- (5) Where an amount of compensation calculated under subsection (3) exceeds 150% of the amount called the *Average Weekly Ordinary Time Earnings of Full-time Adults*, as published from time to time by the Australian Statistician, the amount so calculated shall be reduced by an amount equal to the excess.
- (6) Where an amount of compensation calculated under paragraph (3)(a) is less than the minimum earnings, the amount so calculated shall be increased by an amount equal to the difference between that amount and the minimum earnings.
- (7) For the purposes of subsection (6), the minimum earnings of an employee shall be taken to be:
- (a) \$202, or, if subsection (8) or (9) applies in relation to the employee, the sum of \$202 and the amount or amounts
-

- required to be added under whichever of those subsections applies; or
- (b) an amount equal to 90% of the employee's normal weekly earnings;
- whichever is less.
- (8) If there are prescribed persons wholly or mainly dependent on the employee, there shall be added to the amount of \$202 specified in paragraph (7)(a) the amount of \$50.
- (9) If there are prescribed children in relation to whom this Act applies (whether born before, on or after the date of the injury) wholly or mainly dependent on the employee, there shall be added to the amount of \$202 specified in paragraph (7)(a) the amount of \$25 for each of those children, but an amount shall not be so added for a child in relation to any period before the date of birth of that child.
- (10) If a prescribed child is:
- (a) a prescribed person in relation to the employee; and
- (b) the only prescribed person who is wholly or mainly dependent on the employee;
- subsection (9) does not apply in relation to that child.
- (11) If 2 or more prescribed children are each:
- (a) a prescribed person in relation to the employee; and
- (b) wholly or mainly dependent on the employee;
- subsection (8) applies in relation to one of those children and subsection (9) applies in relation to the remainder of those children.
- (12) In this section, **prescribed person**, in relation to an employee, means:
- (a) the spouse of the employee; or
- (b) any of the following persons, being a person who is 16 or more:
- (i) the parent, step-parent, father-in-law, mother-in-law, grandparent, child, stepchild, grandchild, sibling or half-sibling of the employee;

Part II Compensation

Division 3 Injuries resulting in incapacity for work

Section 20

- (ii) a person in relation to whom the employee stands in the position of a parent or who stands in the position of a parent to the employee;
- (iii) a person (other than the spouse of the employee or a person referred to in subparagraph (i) or (ii)) who is wholly or mainly maintained by the employee and has the care of a prescribed child, being a child who is wholly or mainly dependent on the employee.

Note: In relation to subparagraph (12)(b)(i), see also subsection 4(2).

- (14) For the purposes of the definition of *prescribed person* in subsection (12), a person who has the care of a child referred to in subparagraph (12)(b)(iii) shall not be taken not to be wholly or mainly maintained by an employee merely because the employee pays remuneration to the person for caring for that child.

20 Compensation for injuries resulting in incapacity where employee is in receipt of a superannuation pension

- (1) Compensation payable to an employee who is incapacitated for work as a result of an injury is determined in accordance with this section if:
 - (a) the employee is retired from his or her employment (whether the employee retired voluntarily or was compulsorily retired); and
 - (b) the employee receives a pension under a superannuation scheme as a result of the employee's retirement.
- (2) Comcare is liable to pay compensation to the employee, in respect of the injury, in accordance with this section for each week after the date of the retirement during which the employee is incapacitated.
- (3) The amount of compensation is the amount worked out using this formula:

$$\text{Amount of compensation} - \left(\text{Superannuation amount} + 5\% \text{ of the employee's normal weekly earnings} \right)$$

where:

amount of compensation means the amount of compensation that would have been payable to the employee for a week if:

- (a) section 19, other than subsection 19(6), had applied to the employee; and
 - (b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the week were a week referred to in subsection 19(3).
- (4) In using the formula in subsection (3) to calculate an amount of compensation for an employee who retired before the day on which item 22 of Schedule 1 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* commenced, use “SC” instead of “5% of the employee’s normal weekly earnings”. For this purpose:

SC means the amount of superannuation contributions that the employee would have been required to pay in that week if he or she were still contributing to the superannuation scheme.

21 Compensation for injuries resulting in incapacity where employee is in receipt of a lump sum benefit

- (1) Compensation payable to an employee who is incapacitated for work as a result of an injury is determined in accordance with this section if:
 - (a) the employee is retired from his or her employment (whether the employee retired voluntarily or was compulsorily retired); and
 - (b) the employee receives a lump sum benefit under a superannuation scheme as a result of the employee’s retirement.

Part II Compensation

Division 3 Injuries resulting in incapacity for work

Section 21

- (2) Comcare is liable to pay compensation to the employee, in respect of the injury, in accordance with this section for each week after the date of the retirement during which the employee is incapacitated.
- (3) The amount of compensation is the amount worked out using this formula:

$$\text{Amount of compensation} = \left(\text{Weekly interest on the lump sum} + 5\% \text{ of the employee's normal weekly earnings} \right)$$

where:

amount of compensation means the amount of compensation that would have been payable to the employee for a week if:

- (a) section 19, other than subsection 19(6), had applied to the employee; and
- (b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the week were a week referred to in subsection 19(3).

weekly interest on the lump sum means the amount worked out by:

- (a) multiplying the superannuation amount in relation to the lump sum benefit received by the employee by the rate specified in an instrument made under subsection (5); and
- (b) dividing the result of paragraph (a) by 52.
- (4) In using the formula in subsection (3) to calculate an amount of compensation for an employee who retired before the day on which item 22 of Schedule 1 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* commenced, use “SC” instead of “5% of the employee’s normal weekly earnings”. For this purpose:

SC means the amount of superannuation contributions that the employee would have been required to pay in that week if he or she were still contributing to the superannuation scheme.

- (5) For the purposes of the definition of *weekly interest on the lump sum* in subsection (3) of this section and subsection 21A(3), the Minister may, by legislative instrument, specify a rate that applies for the period of 12 months commencing on 1 July in any year.

21A Compensation for injuries resulting in incapacity if employee is in receipt of a superannuation pension and a lump sum benefit

- (1) Compensation payable to an employee who is incapacitated for work as a result of an injury is determined in accordance with this section if:
- (a) the employee is retired from his or her employment (whether the employee retired voluntarily or was compulsorily retired); and
 - (b) the employee receives:
 - (i) a pension; and
 - (ii) a lump sum benefit;under a superannuation scheme as a result of the employee's retirement.
- (2) Comcare is liable to pay compensation to the employee, in respect of the injury, in accordance with this section for each week after the date of the retirement during which the employee is incapacitated.
- (3) The amount of compensation is the amount worked out using this formula:

$$\text{Amount of compensation} = \left(\begin{array}{l} \text{Superannuation} \\ \text{amount in relation} \\ \text{to the pension} \end{array} + \begin{array}{l} \text{Weekly} \\ \text{interest on the} \\ \text{lump sum} \end{array} + \begin{array}{l} \text{5\% of the} \\ \text{employee's normal} \\ \text{weekly earnings} \end{array} \right)$$

where:

amount of compensation means the amount of compensation that would have been payable to the employee for the relevant week if:

Part II Compensation

Division 3 Injuries resulting in incapacity for work

Section 22

- (a) section 19, other than subsection 19(6), had applied to the employee; and
- (b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the relevant week were a week referred to in subsection 19(3).

superannuation amount in relation to the pension means the superannuation amount in relation to the pension received by the employee in respect of the relevant week.

weekly interest on the lump sum means the amount worked out by:

- (a) multiplying the superannuation amount in relation to the lump sum benefit received by the employee by the rate specified in an instrument made under subsection 21(5); and
 - (b) dividing the result of paragraph (a) by 52.
- (4) In using the formula in subsection (3) to calculate an amount of compensation for an employee who retired before the day on which item 22 of Schedule 1 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* commenced, use “SC” instead of “5% of the employee’s normal weekly earnings”. For this purpose:

SC means the amount of superannuation contributions that the employee would have been required to pay in that week if he or she were still contributing to the superannuation scheme.

22 Compensation where employee is maintained in a hospital

- (1) Where:
 - (a) as a result of an injury, an employee (other than an employee to whom section 20, 21 or 21A applies) is maintained as a patient in a hospital, nursing home or similar place and has been so maintained for a continuous period of not less than one year; and
 - (b) there are no prescribed persons or prescribed children who are dependent on the employee;

Comcare is liable to pay compensation to the employee in respect of the injury of such amount, for each week during which the employee is so maintained, as is determined by Comcare having regard to:

- (c) the present and probable future needs and expenses of the employee; and
- (d) the period during which the employee is likely to be such a patient;

but the amount so determined shall not be less than one-half of, nor more than, the amount per week of compensation that would have been payable to the employee under section 19, 20, 21 or 21A, as the case requires, had that section applied to the employee.

- (2) In this section, *prescribed person*, in relation to an employee, has the same meaning as in section 19.

23 Compensation for incapacity not payable in certain cases

- (1) Compensation is not payable under section 19, 20, 21, 21A or 22 to an employee who has reached pension age.
- (1A) However, if an employee who has reached the age that is 2 years before pension age suffers an injury:
 - (a) subsection (1) does not apply; and
 - (b) compensation is payable under section 19, 20, 21, 21A or 22 in respect of the injury:
 - (i) to the extent that this Act (other than subsection (1)) allows; and
 - (ii) for a maximum of 104 weeks (whether consecutive or not) during which the employee is incapacitated.
- (1B) However, if a Parliamentary Service employee who has reached the age that is 2 years before pension age suffers an injury:
 - (a) subsection (1) does not apply; and
 - (b) compensation is payable under section 19, 20, 21, 21A or 22 in respect of the injury:
 - (i) to the extent that this Act (other than subsection (1)) allows; and

Part II Compensation

Division 3 Injuries resulting in incapacity for work

Section 23A

- (ii) for a maximum of 104 weeks (whether consecutive or not) during which the employee is incapacitated.
- (2) Compensation is not payable under section 19, 20, 21 or 21A in respect of any period during which the employee is imprisoned in connection with his or her conviction of an offence.
- (3) Subject to section 31, where a determination is made that an amount of compensation is payable to an employee under section 30 in respect of an injury, compensation is not payable to the employee under section 19, 20, 21 or 21A in respect of a period of incapacity for work resulting from that injury, being a period occurring after the day on which the determination is made.

23A Repayment of salary, wages or pay, and re-crediting of paid leave, where compensation claim successful

- (1) This section applies if:
 - (a) an employee makes a claim for compensation under this Division; and
 - (b) before or after the employee does so, the Commonwealth makes a payment (the *Commonwealth salary etc. payment*) to the employee by way of salary, wages or pay in relation to the whole or part of a day in the pre-determination period; and
 - (c) Comcare determines that the employee is entitled to the compensation.
- (2) The employee must repay the Commonwealth salary etc. payment.
- (3) The amount repayable must be set off:
 - (a) if paragraph (b) does not apply—by Comcare against any amount of compensation payable under this Division to the employee in respect of the injury concerned; or
 - (b) if, under subsection 112A(3) or 112B(3), Comcare advises the employee's employer of its intention to make a payment (the *advised payment*) to the employer in respect of the compensation—by the employer against any amount payable

under subsection 112A(4) (the *subsection 112A(4) payment*) or 112B(4) by the employer to the employee as a result.

Note: If the amount of the Commonwealth salary etc. payment is less than the amount of compensation, the balance of the compensation will still be payable after a set-off.

- (4) To the extent that the amount repayable is set off, Comcare is taken for the purposes of this Act (other than section 90C) to have made a payment in discharge of its liability to pay the compensation.
- (5) If Comcare sets the amount off, it must make a payment to the employer of an amount equal to the amount it sets off.
- (6) If:
 - (a) the employer made the Commonwealth salary etc. payment out of relevant money; and
 - (b) either:
 - (i) paragraph (3)(a) applies and the employer receives the payment mentioned in subsection (5) from Comcare; or
 - (ii) paragraph (3)(b) applies and the employer makes the subsection 112A(4) payment before it receives the advised payment from Comcare;when the payment or the advised payment is received from Comcare, it is taken to be a repayment of the Commonwealth salary etc. payment and the receipt of an amount for the purposes of section 74 of the *Public Governance, Performance and Accountability Act 2013*.
- (8) To the extent that the amount repayable is not set off under subsection (3), it may be recovered by the Commonwealth as a debt due to the Commonwealth by action in a court of competent jurisdiction.
- (9) If the Commonwealth salary etc. payment was in respect of leave of absence granted to the employee, the employer must restore the employee's leave credit.

Division 4—Injuries resulting in impairment

24 Compensation for injuries resulting in permanent impairment

- (1) Where an injury to an employee results in a permanent impairment, Comcare is liable to pay compensation to the employee in respect of the injury.
- (2) For the purpose of determining whether an impairment is permanent, Comcare shall have regard to:
 - (a) the duration of the impairment;
 - (b) the likelihood of improvement in the employee's condition;
 - (c) whether the employee has undertaken all reasonable rehabilitative treatment for the impairment; and
 - (d) any other relevant matters.
- (3) Subject to this section, the amount of compensation payable to the employee is such amount, as is assessed by Comcare under subsection (4), being an amount not exceeding the maximum amount at the date of the assessment.
- (4) The amount assessed by Comcare shall be an amount that is the same percentage of the maximum amount as the percentage determined by Comcare under subsection (5).
- (5) Comcare shall determine the degree of permanent impairment of the employee resulting from an injury under the provisions of the approved Guide.
- (6) The degree of permanent impairment shall be expressed as a percentage.
- (7) Subject to section 25, if:
 - (a) the employee has a permanent impairment other than a hearing loss; and
 - (b) Comcare determines that the degree of permanent impairment is less than 10%;

an amount of compensation is not payable to the employee under this section.

- (7A) Subject to section 25, if:
- (a) the employee has a permanent impairment that is a hearing loss; and
 - (b) Comcare determines that the binaural hearing loss suffered by the employee is less than 5%;

an amount of compensation is not payable to the employee under this section.

- (8) Subsection (7) does not apply to any one or more of the following:
- (a) the impairment constituted by the loss, or the loss of the use, of a finger;
 - (b) the impairment constituted by the loss, or the loss of the use, of a toe;
 - (c) the impairment constituted by the loss of the sense of taste;
 - (d) the impairment constituted by the loss of the sense of smell.
- (9) For the purposes of this section, the maximum amount is \$80,000.

25 Interim payment of compensation

- (1) Where Comcare:
- (a) makes a determination that an employee is suffering from a permanent impairment as a result of an injury; and
 - (b) is satisfied that the degree of the impairment is equal to or more than 10% but has not made a final determination of the degree of impairment;

Comcare shall, on the written request of the employee made at any time before the final determination is made, make an interim determination of the degree of permanent impairment under section 24 and assess an amount of compensation payable to the employee.

- (2) The amount assessed by Comcare under subsection (1) shall be an amount that is the same percentage of the maximum amount specified in subsection 24(9) as the percentage determined by

Part II Compensation

Division 4 Injuries resulting in impairment

Section 26

Comcare under subsection (1) to be the degree of permanent impairment of the employee.

- (3) Where, after an amount of compensation has been paid to an employee following the making of an interim determination, Comcare makes a final determination of the degree of permanent impairment of the employee, there is payable to the employee an amount equal to the difference (if any) between the amount payable under section 24 on the making of the final determination and the amount paid to the employee under this section.
- (4) Where Comcare has made a final assessment of the degree of permanent impairment of an employee (other than a hearing loss), no further amounts of compensation shall be payable to the employee in respect of a subsequent increase in the degree of impairment, unless the increase is 10% or more.
- (5) If Comcare has made a final assessment of the degree of permanent impairment of an employee constituted by a hearing loss, no further amounts of compensation are payable to the employee in respect of a subsequent increase in the hearing loss, unless the subsequent increase in the degree of binaural hearing loss is 5% or more.

26 Payment of compensation

- (1) Subject to this section, an amount of compensation payable to an employee under section 24 or 25, shall be paid to the employee within 30 days after the date of the assessment of the amount.
- (2) Where an amount of compensation is not paid to an employee in accordance with subsection (1), interest is payable to the employee on that amount in respect of the period commencing on the expiration of the period of 30 days referred to in that subsection and ending on the day on which the amount is paid.
- (3) Interest payable under subsection (2) shall be paid at such rate as is from time to time specified by the Minister for the purposes of this section by legislative instrument.

- (4) This section does not apply where:
- (a) Comcare has been requested under Part VI to reconsider a determination under section 24 or 25, as the case may be; or
 - (b) a proceeding in respect of such a determination has been instituted under Part VI.

27 Compensation for non-economic loss

- (1) Where an injury to an employee results in a permanent impairment and compensation is payable in respect of the injury under section 24, Comcare is liable to pay additional compensation in accordance with this section to the employee in respect of that injury for any non-economic loss suffered by the employee as a result of that injury or impairment.
- (2) The amount of compensation is an amount assessed by Comcare under the formula:
- $$(\$15,000 \times A) + (\$15,000 \times B)$$
- where:
- A* is the percentage finally determined by Comcare under section 24 to be the degree of permanent impairment of the employee; and
- B* is the percentage determined by Comcare under the approved Guide to be the degree of non-economic loss suffered by the employee.
- (3) This section does not apply in relation to a permanent impairment commencing before 1 December 1988 unless an application for compensation for non-economic loss in relation to that impairment has been made before the date of introduction of the Bill for the Act that inserted this subsection.

28 Approved Guide

- (1) Comcare may, from time to time, prepare a written document, to be called the “Guide to the Assessment of the Degree of Permanent Impairment”, setting out:
 - (a) criteria by reference to which the degree of the permanent impairment of an employee resulting from an injury shall be determined;
 - (b) criteria by reference to which the degree of non-economic loss suffered by an employee as a result of an injury or impairment shall be determined; and
 - (c) methods by which the degree of permanent impairment and the degree of non-economic loss, as determined under those criteria, shall be expressed as a percentage.
- (2) Comcare may, from time to time, by instrument in writing, vary or revoke the approved Guide.
- (3) A Guide prepared under subsection (1), and a variation or revocation under subsection (2) of such a Guide, must be approved by the Minister.
- (3A) A Guide prepared under subsection (1), and a variation or revocation under subsection (2) of such a Guide, is a legislative instrument made by the Minister on the day on which the Guide, or variation or revocation, is approved by the Minister.
- (4) Where Comcare, a licensee or the Administrative Appeals Tribunal is required to assess or re-assess, or review the assessment or re-assessment of, the degree of permanent impairment of an employee resulting from an injury, or the degree of non-economic loss suffered by an employee, the provisions of the approved Guide are binding on Comcare, the licensee or the Administrative Appeals Tribunal, as the case may be, in the carrying out of that assessment, re-assessment or review, and the assessment, re-assessment or review shall be made under the relevant provisions of the approved Guide.

- (5) The percentage of permanent impairment or non-economic loss suffered by an employee as a result of an injury ascertained under the methods referred to in paragraph (1)(c) may be 0%.
- (6) In preparing criteria for the purposes of paragraphs (1)(a) and (b), or in varying those criteria, Comcare shall have regard to medical opinion concerning the nature and effect (including possible effect) of the injury and the extent (if any) to which impairment resulting from the injury, or non-economic loss resulting from the injury or impairment, may reasonably be capable of being reduced or removed.
- (8) Comcare shall make copies of the “Guide to the Assessment of the Degree of Permanent Impairment” that has been approved by the Minister, and of any variation of that Guide that has been so approved, available upon application by a person and payment of the prescribed fee (if any).

Division 5—Household and attendant care services

29 Compensation for household services and attendant care services obtained as a result of a non-catastrophic injury

- (1) Subject to subsection (5), where, as a result of an injury (other than a catastrophic injury) to an employee, the employee obtains household services that he or she reasonably requires, Comcare is liable to pay compensation of such amount per week as Comcare considers reasonable in the circumstances, being not less than 50% of the amount per week paid or payable by the employee for those services nor more than \$200.
- (2) Without limiting the matters that Comcare may take into account in determining the household services that are reasonably required in a particular case, Comcare shall, in making such a determination, have regard to the following matters:
 - (a) the extent to which household services were provided by the employee before the date of the injury and the extent to which he or she is able to provide those services after that date;
 - (b) the number of persons living with the employee as members of his or her household, their ages and their need for household services;
 - (c) the extent to which household services were provided by the persons referred to in paragraph (b) before the injury;
 - (d) the extent to which the persons referred to in paragraph (b), or any other members of the employee's family, might reasonably be expected to provide household services for themselves and for the employee after the injury;
 - (e) the need to avoid substantial disruption to the employment or other activities of the persons referred to in paragraph (b).

Note: In relation to paragraph (2)(d), see also subsection 4(2).

- (3) Where, as a result of an injury (other than a catastrophic injury) to an employee, the employee obtains attendant care services that he

or she reasonably requires, Comcare is liable to pay compensation of:

- (a) \$200 per week; or
 - (b) an amount per week equal to the amount per week paid or payable by the employee for those services;
- whichever is less.
- (4) Without limiting the matters that Comcare may take into account in determining the attendant care services that are reasonably required in a particular case, Comcare shall, in making such a determination, have regard to the following matters:
- (a) the nature of the employee's injury and the degree to which that injury impairs his or her ability to provide for his or her personal care;
 - (b) the extent to which any medical service or nursing care received by the employee provides for his or her essential and regular personal care;
 - (c) the extent to which it is reasonable to meet any wish by the employee to live outside an institution;
 - (d) the extent to which attendant care services are necessary to enable the employee to undertake or continue employment;
 - (e) any assessment made in relation to the rehabilitation of the employee;
 - (f) the extent to which a relative of the employee might reasonably be expected to provide attendant care services.
- Note: In relation to paragraph (4)(f), see also subsection 4(2).
- (5) Comcare is not liable to pay compensation under subsection (1) in respect of any week within the period of 28 days beginning on the date of the injury unless Comcare determines otherwise in a particular case on the ground of financial hardship or the need to provide for adequate supervision of dependent children.
- (6) An amount of compensation payable by Comcare under subsection (1) or (3) is payable:
- (a) where the employee has paid for the household services or attendant care services, as the case may be—to the employee;

Section 29A

or

- (b) in any other case—to the person who provided those services.
- (7) Where Comcare pays an amount to a person who provided household services or attendant care services to an employee, the payment of the amount is, to the extent of the payment, a discharge of the liability of the employee to pay for those services.

29A Compensation for household services and attendant care services obtained as a result of a catastrophic injury

Household services

- (1) If, as a result of a catastrophic injury to an employee, the employee obtains household services that he or she reasonably requires, Comcare is liable to pay compensation of such amount per week as Comcare considers reasonable in the circumstances.
- (2) Without limiting the matters that Comcare may take into account in determining the household services that are reasonably required in a particular case, Comcare must, in making such a determination, have regard to the following matters:
 - (a) the extent to which household services were provided by the employee before the date of the catastrophic injury and the extent to which he or she is able to provide those services after that date;
 - (b) the number of persons living with the employee as members of his or her household, their ages and their need for household services;
 - (c) the extent to which household services were provided by the persons referred to in paragraph (b) before the catastrophic injury;
 - (d) the extent to which the persons referred to in paragraph (b), or any other members of the employee's family, might reasonably be expected to provide household services for themselves and for the employee after the catastrophic injury;

- (e) the need to avoid substantial disruption to the employment or other activities of the persons referred to in paragraph (b).

Note: In relation to paragraph (2)(d), see also subsection 4(2).

Attendant care services

- (3) If, as a result of a catastrophic injury to an employee, the employee obtains attendant care services that he or she reasonably requires, Comcare is liable to pay compensation of such amount per week as Comcare considers reasonable in the circumstances.
- (4) Without limiting the matters that Comcare may take into account in determining the attendant care services that are reasonably required in a particular case, Comcare must, in making such a determination, have regard to the following matters:
 - (a) the nature of the employee's catastrophic injury and the degree to which that injury impairs his or her ability to provide for his or her personal care;
 - (b) the extent to which any medical service or nursing care received by the employee provides for his or her essential and regular personal care;
 - (c) the extent to which it is reasonable to meet any wish by the employee to live outside an institution;
 - (d) the extent to which attendant care services are necessary to enable the employee to undertake or continue employment;
 - (e) any assessment made in relation to the rehabilitation of the employee;
 - (f) the extent to which a relative of the employee might reasonably be expected to provide attendant care services.

Note: In relation to paragraph (4)(f), see also subsection 4(2).

Recipient of compensation

- (5) An amount of compensation payable by Comcare under subsection (1) or (3) is payable:
 - (a) if the employee has paid for the household services or attendant care services, as the case may be—to the employee;or

Part II Compensation

Division 5 Household and attendant care services

Section 29A

- (b) in any other case—to the person who provided those services.
- (6) If Comcare pays an amount under subsection (1) or (3) to a person who provided household services or attendant care services to an employee, the payment of the amount is, to the extent of the payment, a discharge of the liability of the employee to pay for those services.

Division 6—Miscellaneous

30 Redemption of compensation

- (1) Where:
- (a) Comcare is liable to make weekly payments under section 19, 20, 21 or 21A to an employee in respect of an injury resulting in an incapacity;
 - (b) the amount of those payments is \$50 per week or less; and
 - (c) Comcare is satisfied that the degree of the employee's incapacity is unlikely to change;

Comcare shall make a determination that its liability to make further payments to the employee under that section be redeemed by the payment to the employee of a lump sum.

- (2) The amount of the lump sum is the amount worked out using the formula:

$$\frac{52 \times \text{Amount per week} \times \left[(\text{Specified number} + 1)^n - 1 \right]}{\text{Specified number} \times \left[(\text{Specified number} + 1)^n \right]}$$

- (3) For the purposes of subsection (2):

amount per week means the amount per week payable to the employee under section 19, 20, 21 or 21A, as the case may be, at the date of the determination.

specified number means the number specified by the Minister.

n means the number worked out using the formula:

$$\frac{\text{Number of days}}{365}$$

where:

number of days means the number of days in the period beginning on the day after the day on which the determination is made and

Section 31

ending:

- (a) if the employee is injured before reaching the age that is 2 years before pension age—on the day immediately before the day on which the employee reaches pension age; and
 - (b) if the employee is injured on or after reaching the age that is 2 years before pension age—on the day immediately before the employee would cease to be entitled to receive compensation under section 19, 20, 21 or 21A of this Act.
- (4) The Minister may, from time to time, by legislative instrument, specify a number (being a specification of the number in decimal notation) for the purposes of subsection (2).

31 Recurrent payments after payment of lump sum

- (1) Where:
- (a) at any time after a lump sum is paid to an employee under section 30 in respect of an injury, the injury results in the employee being incapacitated for work to the extent that the employee is not able to engage in suitable employment; and
 - (b) the incapacity is likely to continue indefinitely;
- Comcare is liable to pay compensation to the employee under this section during the period of the incapacity.
- (2) The amount of compensation is an amount per week equal to the amount per week that would, but for the payment of the lump sum, have been payable to the employee under section 19, 20, 21 or 21A, as the case may be, in respect of the incapacity, less the amount per week that was redeemed at the date of the determination under section 30.

32 Cancelled determinations not to affect certain payments of compensation

- (1) For the purposes of subsections 23(3) and 31(2), account shall not be taken of a determination that the liability of Comcare to make further payments to an employee under section 19, 20, 21 or 21A is to be redeemed if the determination:

- (a) is revoked by Comcare; or
 - (b) is set aside by a tribunal or court.
- (2) Paragraph (1)(b) does not apply if a further determination is made by a tribunal or court, being a determination under which the liability of Comcare to make further payments to the employee under section 19, 20, 21 or 21A is to be redeemed.

33 Reduction of compensation in certain cases

- (1) Where, in relation to a day in respect of which compensation is payable to an employee under section 19, 20, 21, 21A, 22 or 31, an amount or amounts are paid or payable to the employee by the Commonwealth or a licensed corporation by way of salary, wages or pay, the amount of compensation payable under that section in respect of that day shall be reduced by the amount, or the sum of the amounts, so paid or payable to the employee.
- (2) In this section, a reference to an amount paid or payable to an employee by the Commonwealth or a licensed corporation does not include a reference to:
- (a) an amount by way of pay in respect of a period of leave of absence granted, or in lieu of the grant of a period of leave of absence, under section 16 or 17 of the *Long Service Leave (Commonwealth Employees) Act 1976*, section 73 or 74 of the *Public Service Act 1922* as in force before 20 December 1976 or section 7 or 8 of the *Commonwealth Employees' Furlough Act 1943* as in force before that day;
 - (b) an amount by way of pay in respect of a period of leave of absence granted, or in lieu of the grant of a period of leave of absence, under regulations in force under the *Defence Act 1903*;
 - (ba) an amount by way of pay in respect of a period of leave of absence, or in lieu of the grant of a period of leave of absence, in the nature of long service leave under a law of a State or Territory or an industrial award, determination, order or agreement;

Section 33

- (c) any amount that the employee is able to earn in suitable employment or any amount of earnings payable to an employee, being an amount that has been taken into account for the purposes of calculating the amount of compensation payable to the employee under section 19; or
- (d) an amount of deferred pay within the meaning of Part III of the *Defence Forces Retirement Benefits Act 1959* or of any provision of that Part; or
- (e) a Commonwealth salary etc. payment as defined in paragraph 23A(1)(b).

Part III—Rehabilitation

Division 1—Preliminary

34 Definitions

In this Part:

principal, in relation to an applicant for approval as a rehabilitation program provider or for renewal of such an approval, means:

- (a) if the applicant is a partnership—any of the partners; and
- (b) if the applicant is a company—any of the directors of the company and, if the person responsible for the day to day running of the company is not a director, also that person.

renewal date means:

- (a) a date occurring not later than 12 months after this Act receives the Royal Assent that is determined, in writing, by the Minister to be the first renewal date; and
- (b) the dates occurring, at intervals prescribed for the purposes of this paragraph, after the date determined to be the first renewal date.

Division 2—Approved rehabilitation program providers

34A How this Part applies to partnerships

- (1) A partnership may apply for approval as, or for renewal of approval as, a rehabilitation program provider as if the partnership were a person.
- (2) If the partnership so applies, this Part applies subject to the changes set out in subsections (3), (4), (5) and (6), to and in relation to:
 - (a) that application; and
 - (b) if the application is approved—the operations of the partnership as a rehabilitation program provider.
- (3) If this Part would otherwise require or permit something to be done by the partnership in relation to its application for approval or renewal of approval as, or its operation as, a rehabilitation program provider, the thing may be done by one or more of the partners on behalf of the partnership.
- (4) If, under this Part, a document is given, in accordance with section 28A of the *Acts Interpretation Act 1901*, to a partner of a partnership in relation to its application for approval or renewal of approval as, or its operation as, a rehabilitation program provider, the document is taken to have been given to the partnership.
- (5) An obligation that would otherwise be imposed upon a partnership in relation to its application for approval or renewal of approval as, or its operation as, a rehabilitation program provider by a provision of this Part:
 - (a) is imposed on each partner instead; but
 - (b) may be discharged by any of the partners.
- (6) The partners are jointly and severally liable to pay any fee that would otherwise be payable by the partnership under a provision of this Part in relation to its application for approval or renewal of approval as, or its operation as, a rehabilitation program provider.

- (7) For the purposes of this Part, a change in the composition of a partnership does not affect the continuity of the partnership:
- (a) as an applicant for approval or renewal of approval as a rehabilitation program provider; or
 - (b) as a provider of rehabilitation programs.

34B Persons may seek approval as rehabilitation program providers

A person may apply to Comcare for approval as a rehabilitation program provider.

34C Applications for initial approval

- (1) An application for initial approval of a person as a rehabilitation program provider must:
- (a) be in writing in the approved form; and
 - (b) identify the applicant and, if the applicant is not an individual, also identify the persons who are, at the time of the application:
 - (i) the principals of the applicant; and
 - (ii) employees of the applicant who will participate in the provision of rehabilitation services under this Act; and
 - (c) contain such information relating to:
 - (i) the criteria in force under section 34D; and
 - (ii) operational standards in force under section 34E; and
 - (iii) such other matters;as the approved form specifies.

Note: For meaning of *approved form* see section 34S.

- (2) Applications must be accompanied by the prescribed fee for processing the application.
- (3) If Comcare receives an application that meets the requirements of subsection (1) and is paid the prescribed fee, it is required to process the application within 6 months of receiving it.
- (4) If Comcare gives an applicant notice under section 34N requiring the production of further information, the period from the giving of

Section 34D

that notice to the production of that information is to be disregarded.

34D Comcare to establish criteria for approval, or renewal of approval, of persons as rehabilitation program providers

- (1) Comcare must, by legislative instrument, determine the criteria to be met by persons applying:
 - (a) under section 34B for approval as rehabilitation program providers; or
 - (b) under subsection 34J(1) for renewal of such an approval.
- (2) Without limiting the generality of subsection (1), the criteria must include:
 - (a) matters relating to the qualifications of the applicant and, if the applicant is not an individual, of the principals and employees of the applicant; and
 - (b) matters relating to the probity, and the financial arrangements, of the applicant; and
 - (c) if the applicant is not an individual—matters relating to the probity of the principals and employees of the applicant.

34E Comcare to establish operational standards for rehabilitation program providers

- (1) Comcare must, by legislative instrument, determine operational standards to be complied with by all persons who are approved as rehabilitation program providers under subsection 34F(1).
- (2) Without limiting the generality of subsection (1), the standards must include:
 - (a) standards relating to effectiveness, availability and cost that the person is required to meet and to maintain in the provision of rehabilitation services as an approved rehabilitation program provider; and
 - (b) such other standards as Comcare considers appropriate concerning the operation of the person as an approved rehabilitation program provider.

- (4) Comcare may only vary standards with effect from a renewal date but must publish the standards as proposed to be so varied, at least 6 months before the renewal date when they take effect.

34F The initial approval decision

- (1) If Comcare is satisfied that an applicant for approval as a rehabilitation program provider, having regard to information in the application and to any further information that is supplied to Comcare under section 34N:
- (a) meets the criteria for approval as a rehabilitation program provider in force under section 34D; and
 - (b) is likely to be able to comply with the operational standards presently in force; and
 - (c) if the applicant is making an application within 6 months of the next renewal date—is also likely to be able to comply with the operational standards that will be in force with effect from that renewal date;

Comcare must:

- (d) approve the applicant as a rehabilitation program provider; and
 - (e) inform the applicant, by written notice, of its decision.
- (2) If Comcare is not so satisfied, it must:
- (a) refuse to approve the applicant as a rehabilitation program provider; and
 - (b) inform the applicant, by written notice, of its decision and of the reasons for that decision.

34G Duration of initial approval given on application

If Comcare approves a person as a rehabilitation program provider after consideration of an application, the initial approval of the person as a rehabilitation program provider:

- (a) comes into force on the date (the ***starting date***) on which the application is determined or any such later date as is specified in the determination; and

Section 34H

- (b) subject to section 34Q, remains in force:
 - (i) if the starting date occurs not less than 6 months before the renewal date next following the starting date—until the end of the day immediately before that renewal date; and
 - (ii) if the starting date occurs less than 6 months before the renewal date next following the starting date—until the end of the day immediately before the second renewal date following the starting date.

34H Comcare may also approve persons as rehabilitation program providers on its own initiative

- (1) Comcare may, in any circumstance where it considers that the urgent need for the provision of rehabilitation services makes it appropriate, also approve a person as a rehabilitation program provider on its own initiative.
- (2) Such an approval may be given despite the fact that:
 - (a) the person approved has not applied under section 34B for approval as a rehabilitation program provider; or
 - (b) if the person has so applied—Comcare has not, at the time of the approval, satisfied itself that the person approved meets the criteria for approval as a rehabilitation program provider in force under section 34D.
- (3) An approval under this section is for such period as Comcare specifies in the instrument of approval only and is not able to be renewed.
- (4) Nothing in subsection (3) prevents Comcare from extending the approval period specified under that subsection or specified under that subsection and previously extended under this subsection.
- (5) Nothing in this section prevents a person approved as a rehabilitation program provider under this section from:
 - (a) making an application under section 34B as a rehabilitation program provider; or

- (b) continuing an application under section 34B already made but not fully considered at the time of the approval under this section.
- (6) If such an application is granted, the approval under this section is taken to have been revoked with effect from the grant.
- (7) An approval under this section is subject to such conditions as Comcare specifies in the instrument of approval.

34J Persons may seek renewal of approval as rehabilitation program providers in certain circumstances

- (1) A person who is a rehabilitation program provider approved under section 34F may apply to Comcare for renewal of the person's approval as a rehabilitation program provider.
- (2) Subject to subsection (3), an application for renewal must be made not less than 6 months before the end of an approval period.
- (3) The Chief Executive Officer may, in exceptional circumstances, permit an application for renewal to be made less than 6 months before the end of an approval period.
- (4) In this section:

approval period means the period:

- (a) of the initial approval; or
- (b) if that approval has been renewed under section 34L—of the approval as last renewed.

34K The renewal application

- (1) An application for renewal of a person as a rehabilitation program provider must:
 - (a) be in writing in the approved form; and
 - (b) identify the applicant and, if the applicant is not an individual, also identify the persons who are, at the time of the application:
 - (i) the principals of the applicant; and

Part III Rehabilitation

Division 2 Approved rehabilitation program providers

Section 34L

- (ii) employees of the applicant who will participate in the provision of rehabilitation services under this Act; and
 - (c) contain such information relating to:
 - (i) the criteria in force under section 34D; and
 - (ii) operational standards in force under section 34E and those standards that will have effect from the renewal date; and
 - (iii) such other matters as the approved form specifies.
- Note: For meaning of *approved form* see section 34S.
- (2) All applications for renewal must be accompanied by the prescribed fee for processing the application.
 - (3) If Comcare receives an application that meets the requirements of subsection (1) and is paid the prescribed fee, it is required to process the application within 6 months of receiving it.
 - (4) If Comcare has given an applicant notice under section 34N requiring the production of further information, the period from the giving of that notice to the production of that information is to be disregarded.

34L The renewal decision

- (1) If Comcare is satisfied, having regard to the information in the renewal application and to any further information that is supplied to Comcare under section 34N, that the applicant:
 - (a) meets the criteria established in force under section 34D; and
 - (b) has demonstrated compliance with the operational standards in force under section 34E since the applicant was initially approved or last renewed; and
 - (c) is likely to be able to meet the operational standards in force under section 34E with effect from the renewal date;Comcare must:
 - (d) renew the approval of the applicant as a rehabilitation program provider; and
 - (e) inform the applicant, by written notice, of its decision.

- (2) If Comcare is not so satisfied, it must:
 - (a) refuse to renew the applicant's approval; and
 - (b) inform the applicant, by written notice, of its decision and of the reasons for that decision.

34M Duration of renewal of approval

If Comcare renews the approval of a person as an approved rehabilitation program provider, the renewal:

- (a) comes into force on the day following the end of the previous approval period; and
- (b) subject to section 34Q, remains in force until the end of the day immediately before the next following renewal date.

34N Further information may be required of applicants

- (1) If, having regard to the material provided in an application for initial approval or in an application for renewal, Comcare is of the opinion that further information is required from the applicant, Comcare may give a written notice to the applicant:
 - (a) setting out the nature of the further information required; and
 - (b) requiring it to be supplied within a period specified in the notice.
- (2) Pending the provision of the further information required, the processing of the application is suspended.
- (3) If the information is not supplied within the period specified in the notice requesting it, the application is taken to have been withdrawn.

34P Initial approval or renewal is subject to conditions

The approval of a person as a rehabilitation program provider under section 34F, and the renewal of that approval under section 34L, is subject to:

- (a) the condition that the provider comply with the standards in force under section 34E; and

Part III Rehabilitation

Division 2 Approved rehabilitation program providers

Section 34Q

- (b) such conditions as Comcare specifies in the instrument of approval or renewal in relation to notification to Comcare:
 - (i) if the provider is not an individual—of any change in the identity of the principals and employees of the provider; and
 - (ii) of any matter that, if the provider were not already approved, would affect the capacity of the provider to meet the particular criteria for approval as an approved rehabilitation program provider in force from time to time under section 34D; and
 - (iii) of any matter that affects the compliance, or the capacity for compliance, of the provider with the operational standards in force at the time; and
- (c) any other conditions specified in the instrument of approval or renewal as Comcare considers appropriate.

34Q Revocation of approval

If, at any time, Comcare is satisfied, in relation to an approved rehabilitation program provider, that:

- (a) the provider has failed to comply with the conditions to which the provider's approval is subject under section 34P; or
- (b) were the provider to be applying for approval at that time, Comcare would not approve the provider;

Comcare may, by written notice, revoke the approval with effect from a date specified in the notice.

34R Review of decisions

- (1) The following decisions are reviewable by the Administrative Appeals Tribunal:
 - (a) a decision to refuse an application for approval of a person as a rehabilitation program provider;
 - (b) a decision to refuse an application for renewal of the approval of a person as a rehabilitation program provider;

- (c) a decision to revoke an approval of a person as a rehabilitation program provider;
 - (d) a decision to impose particular conditions under paragraph 34P(c) on the grant of an approval of a person as a rehabilitation program provider.
- (2) In subsection (1):

decision has the same meaning as it has in the *Administrative Appeals Tribunal Act 1975*.

34S Approved forms

In this Division a reference to an approved form is a reference to a form that is approved, by legislative instrument, by Comcare.

Division 3—Rehabilitation programs

35 Exempt authorities

The Minister may, by notice in writing, declare an Entity or a Commonwealth authority specified in the notice to be an exempt authority.

36 Assessment of capability of undertaking rehabilitation program

- (1) Where an employee suffers an injury resulting in an incapacity for work or an impairment, the rehabilitation authority may at any time, and shall on the written request of the employee, arrange for the assessment of the employee's capability of undertaking a rehabilitation program.
- (2) An assessment shall be made by:
 - (a) a legally qualified medical practitioner nominated by the rehabilitation authority;
 - (b) a suitably qualified person (other than a medical practitioner) nominated by the rehabilitation authority; or
 - (c) a panel comprising such legally qualified medical practitioners or other suitably qualified persons (or both) as are nominated by the rehabilitation authority.
- (3) The rehabilitation authority may require the employee to undergo an examination by the person or panel of persons making the assessment.
- (4) Where an employee refuses or fails, without reasonable excuse, to undergo an examination in accordance with a requirement, or in any way obstructs such an examination, the employee's rights to compensation under this Act, and to institute or continue any proceedings under this Act in relation to compensation, are suspended until the examination takes place.

- (4A) However, subsection (4) does not operate to suspend the employee's right to compensation for the cost of medical treatment that is payable under section 16.
- (5) The relevant authority shall pay the cost of conducting any examination of an employee and is liable to pay to the employee an amount equal to the amount of the expenditure reasonably incurred by the employee in making a necessary journey in connection with the examination or remaining, for the purpose of the examination, at a place to which the employee has made a journey for that purpose.
- (6) In deciding questions arising under subsection (5), a relevant authority shall have regard to:
- (a) the means of transport available to the employee for the journey;
 - (b) the route or routes by which the employee could have travelled; and
 - (c) the accommodation available to the employee.
- (7) Where an employee's right to compensation is suspended under subsection (4), compensation is not payable in respect of the period of the suspension.
- (8) Where an examination is carried out, the person or persons who carried out the examination shall give to the rehabilitation authority a written assessment of the employee's capability of undertaking a rehabilitation program, specifying, where appropriate, the kind of program which he or she is capable of undertaking and containing any other information relating to the provision of a rehabilitation program for the employee that the rehabilitation authority may require.

37 Provision of rehabilitation programs

- (1) A rehabilitation authority may make a determination that an employee who has suffered an injury resulting in an incapacity for work or an impairment should undertake a rehabilitation program.

Section 37

- (2) If a rehabilitation authority makes a determination under subsection (1), the authority may:
- (a) provide a rehabilitation program for the employee itself; or
 - (b) make arrangements with an approved program provider for that provider to provide a rehabilitation program for the employee.

Note: A rehabilitation program that is being provided to a person under this section might cease if the person is also provided with rehabilitation under the MRCA (see section 18 of the CTPA).

- (2A) A determination under subsection (1) is not a legislative instrument.
- (3) In making a determination under subsection (1), a rehabilitation authority shall have regard to:
- (a) any written assessment given under subsection 36(8);
 - (b) any reduction in the future liability to pay compensation if the program is undertaken;
 - (c) the cost of the program;
 - (d) any improvement in the employee's opportunity to be employed after completing the program;
 - (e) the likely psychological effect on the employee of not providing the program;
 - (f) the employee's attitude to the program;
 - (g) the relative merits of any alternative and appropriate rehabilitation program; and
 - (h) any other relevant matter.
- (4) The cost of any rehabilitation program provided for an employee under this section shall be paid by the relevant authority in relation to that employee.
- (5) Where an employee is undertaking a rehabilitation program under this section, compensation is not payable to the employee under section 19 or 31 but:
- (a) if the employee is undertaking a full-time program—
compensation is payable to the person of an amount per week equal to the amount per week of the compensation that

would, but for this subsection, have been payable under section 19 if the incapacity referred to in that section had continued throughout the period of the program; or

- (b) if the employee is undertaking a part-time program— compensation is payable to the employee of such amount per week as the relevant authority determines, being an amount not less than the amount per week of the compensation that, but for this subsection, would have been payable to the employee under this Act and not greater than the amount per week of the compensation that would have been payable under paragraph (a) if the employee had been undertaking a full-time program.
- (7) Where an employee refuses or fails, without reasonable excuse, to undertake a rehabilitation program provided for the employee under this section, the employee's rights to compensation under this Act, and to institute or continue any proceedings under this Act in relation to compensation, are suspended until the employee begins to undertake the program.
- (7A) However, subsection (7) does not operate to suspend the employee's right to compensation for the cost of medical treatment that is payable under section 16.
- (8) Where an employee's right to compensation is suspended under subsection (7), compensation is not payable in respect of the period of the suspension.

38 Review of certain determinations by Comcare

- (1) As soon as practicable after a rehabilitation authority (other than a relevant authority) makes a determination under section 36 or 37, the authority shall cause to be served on the employee to whom the determination relates a notice in writing setting out:
 - (a) the terms of the determination;
 - (b) the reasons for the determination; and
 - (c) a statement to the effect that the employee may, if dissatisfied with the determination, request Comcare for a review of the determination under this section.

Section 39

- (2) An employee in respect of whom a determination under section 36 or 37 is made by a rehabilitation authority (other than a relevant authority) may, by notice in writing given to Comcare, request Comcare to review the determination.
- (3) A request shall:
 - (a) set out the reasons for the request; and
 - (b) be given to Comcare within 30 days after the day on which the determination first came to the notice of the employee, or within such further period (if any) as Comcare, either before or after the expiration of that period, allows.
- (4) On receipt of a request, Comcare shall review the determination and may make a decision affirming or revoking the determination or varying the determination in such manner as Comcare thinks fit.

39 Compensation payable in respect of certain alterations etc.

- (1) Where:
 - (a) an employee suffers an injury resulting in an impairment; and
 - (b) the employee is undertaking, or has completed, a rehabilitation program or has been assessed as not capable of undertaking such a program;the relevant authority is liable to pay compensation of such amount as is reasonable in respect of the costs, payable by the employee, of:
 - (c) any alteration of the employee's place of residence or place of work;
 - (d) any modifications of a vehicle or article used by the employee; or
 - (e) any aids or appliances for the use of the employee, or the repair or replacement of such aids or appliances;being alterations, modifications or aids or appliances reasonably required by the employee, having regard to the nature of the employee's impairment and, where appropriate, the requirements of the rehabilitation program.

- (2) The matters to which the relevant authority shall have regard in determining the amount of compensation payable in a particular case under subsection (1) include such of the following matters as are relevant in that case:
- (a) the likely period during which the alteration, modification, aid or appliance will be required;
 - (b) any difficulties faced by the employee in gaining access to, or enjoying reasonable freedom of movement in, his or her place of residence or work;
 - (c) any difficulties faced by the employee in gaining access to, driving or enjoying freedom and safety of movement in, a vehicle used by the employee;
 - (d) any alternative means of transport available to the employee;
 - (e) whether arrangements can be made for hiring the relevant aid or appliance;
 - (f) when the employee has previously received compensation under this section in respect of an alteration of his or her place of residence or a modification of a vehicle and has later disposed of that place of residence or vehicle—whether the value of that place of residence or vehicle was increased as a result of the alteration or modification.
- (3) An amount of compensation payable under this section is payable:
- (a) to, or in accordance with the directions of, the employee;
 - (b) if the employee dies before the compensation is paid and without having paid the cost referred to in subsection (1) and another person, not being the legal personal representative of the employee, has paid that cost—to that other person; or
 - (c) if that cost has not been paid and the employee, or the legal personal representative of the employee, is unable, or refuses or fails, to make a claim for the compensation—to the person to whom that cost is payable.
- (4) Where a person is liable to pay any cost referred to in subsection (1), any amount paid under subsection (3) to the person to whom that cost is payable is, to the extent of the payment, a discharge of the liability of the first-mentioned person.

Section 40

40 Duty to provide suitable employment

(1) Where an employee is undertaking, or has completed, a rehabilitation program, the relevant employer shall take all reasonable steps to provide the employee with suitable employment or to assist the employee to find such employment.

(2) In this section:

relevant employer means:

- (a) in relation to an employee employed by a Commonwealth authority—that authority; and
- (aa) in relation to an employee employed by a licensed corporation—that corporation; and
- (b) in relation to any other employee—the Commonwealth.

41 Rehabilitation authorities to comply with guidelines

(1) Comcare may prepare and issue to rehabilitation authorities guidelines in relation to the performance or exercise by those authorities of their functions or powers under this Part.

(2) A rehabilitation authority shall comply with any guidelines issued under subsection (1).

41A Delegation by rehabilitation authority

(1) A rehabilitation authority who is:

- (a) the principal officer of an Entity; or
- (b) the principal officer of a Commonwealth authority in respect of which a licence is not in force under Part VIII; or
- (c) the principal officer of a licensee;

may, in writing, delegate to an officer of, or a person employed by, that Entity, authority or licensee all or any of the powers and functions of the rehabilitation authority under this Part.

(2) A rehabilitation authority who is the Chief of the Defence Force may, in writing, delegate to an officer or employee of the

Commonwealth all or any of the powers and functions of the rehabilitation authority under this Part.

41B Application of rehabilitation provisions to former Commonwealth authorities

If:

- (a) a body corporate ceases to be a Commonwealth authority at a particular time (the *cessation time*); and
- (b) the body corporate continues in existence; and
- (c) before the cessation time, an employee of the body corporate suffered an injury resulting in an incapacity for work or an impairment;

then:

- (d) the definition of *rehabilitation authority* in subsection 4(1), and sections 36, 37, 38, 39, 41 and 41A, apply after the cessation time, in relation to the injury, as if the body corporate had not ceased to be a Commonwealth authority; and
- (e) if, after the cessation time, the employee is undertaking, or has completed, a rehabilitation program in relation to the injury—the body corporate is, for the purposes of section 40, taken to be the relevant employer of the employee.

41C Application of rehabilitation provisions to successors of former Commonwealth authorities

Successor is a Commonwealth authority or Entity

(1) If:

- (a) a body corporate ceases to be a Commonwealth authority at a particular time (the *cessation time*); and
- (b) the body corporate ceases to exist at the cessation time; and
- (c) under a legislative instrument made by the Minister, a specified Commonwealth authority or Entity is taken to be the successor of the body corporate for the purposes of this subsection; and

Section 41C

(d) before the cessation time, an employee of the body corporate suffered an injury resulting in an incapacity for work or an impairment;

then:

- (e) the definition of *rehabilitation authority* in subsection 4(1), and sections 36, 37, 38, 39, 41 and 41A, apply after the cessation time, in relation to the injury, as if:
- (i) the employee were employed by the successor; and
 - (ii) the principal executive officer of the successor were the principal officer of the successor; and
- (f) if, after the cessation time, the employee is undertaking, or has completed, a rehabilitation program in relation to the injury—the successor is, for the purposes of section 40, taken to be the relevant employer of the employee.

Successor is neither a Commonwealth authority nor an Entity

(2) If:

- (a) a body corporate ceases to be a Commonwealth authority at a particular time (the *cessation time*); and
- (b) the body corporate ceases to exist at the cessation time; and
- (c) under a legislative instrument made by the Minister, a specified body, person, organisation or group of persons is taken to be the successor of the body corporate for the purposes of this subsection; and
- (d) the successor is neither a Commonwealth authority nor an Entity; and
- (e) before the cessation time, an employee of the body corporate suffered an injury resulting in an incapacity for work or an impairment;

then:

- (f) the definition of *rehabilitation authority* in subsection 4(1), and sections 36, 37, 38, 39, 41 and 41A, apply after the cessation time, in relation to the injury, as if:
- (i) the employee were employed by the successor; and
 - (ii) the successor were a Commonwealth authority; and

- (g) if, after the cessation time, the employee is undertaking, or has completed, a rehabilitation program in relation to the injury—the successor is, for the purposes of section 40, taken to be the relevant employer of the employee.

41D Application of rehabilitation provisions to the Australian Capital Territory if it ceases to be a Commonwealth authority

If:

- (a) the Australian Capital Territory ceases to be a Commonwealth authority at a particular time (the *cessation time*); and
- (b) before the cessation time, a person employed by the Australian Capital Territory suffered an injury resulting in an incapacity for work or an impairment;

then:

- (c) the definition of *rehabilitation authority* in subsection 4(1), and sections 36, 37, 38, 39, 41 and 41A, apply after the cessation time, in relation to the injury, as if the Australian Capital Territory had not ceased to be a Commonwealth authority; and
- (d) if, after the cessation time, the employee is undertaking, or has completed, a rehabilitation program in relation to the injury—the Australian Capital Territory is, for the purposes of section 40, taken to be the relevant employer of the employee.

Part IV—Liabilities arising apart from this Act

42 Interpretation

In this Part:

- (a) a reference to the loss of, or damage to, property used by an employee is a reference to the loss of, or damage to, that property in circumstances referred to in section 15;
- (b) a reference to an employee is, if the employee has died, a reference to his or her legal personal representative; and
- (c) a reference to a dependant of a deceased employee is, if the dependant has died, a reference to the dependant's legal personal representative.

43 Certain persons may request cessation of compensation payments

- (1) Where compensation under this Act is payable to, or for the benefit of, a person who is:
 - (a) a member of the Forces, or a member of a Peacekeeping Force, for the purposes of Part IV of the *Veterans' Entitlements Act 1986*; or
 - (b) a veteran who has, on or after the day on which the *Military Compensation Act 1994* commences, rendered operational service for the purposes of Part II of the *Veterans' Entitlements Act 1986*; or
 - (c) a dependant of such a member or veteran;the person may, by notice in writing to Comcare, request that an amount of compensation under this Act to which the person is entitled, or may become entitled, not be paid to, or for the benefit of, the person.
- (2) Where Comcare receives a request by a person:
 - (a) an amount of compensation under this Act that is payable to, or for the benefit of, the person at the time of that receipt, being an amount to which the request relates, ceases to be so payable; and

- (b) an amount of compensation under this Act that would, but for this section, become payable to, or for the benefit of, that person during the period when the request is in force, being an amount to which the request relates, does not become payable.
- (3) A person who has made a request may, by notice in writing to Comcare, revoke the request.
- (4) The revocation of a request:
 - (a) has effect on the receipt of the notice of revocation by Comcare; and
 - (b) does not revive any entitlement to an amount of compensation that had ceased to be payable, or had not become payable, as a result of the making of the request.
- (5) A person who is under a legal disability may not make or revoke a request but a request may be made or revoked on his or her behalf by another person who Comcare is satisfied represents the first-mentioned person's interests.
- (6) A request or revocation made on behalf of a person under a legal disability shall, for the purposes of this section, be taken to have been made by that person.

44 Action for damages not to lie against Commonwealth etc. in certain cases

- (1) Subject to section 45, an action or other proceeding for damages does not lie against the Commonwealth, a Commonwealth authority, a licensed corporation or an employee in respect of:
 - (a) an injury sustained by an employee in the course of his or her employment, being an injury in respect of which the Commonwealth, Commonwealth authority or licensed corporation would, but for this subsection, be liable (whether vicariously or otherwise) for damages; or
 - (b) the loss of, or damage to, property used by an employee resulting from such an injury;

Section 45

whether that injury, loss or damage occurred before or after the commencement of this section.

- (2) Subsection (1) does not apply in relation to an action or proceeding instituted before the commencement of this section.
- (3) If:
 - (a) an employee has suffered an injury in the course of his or her employment; and
 - (b) that injury results in that employee's death;subsection (1) does not prevent a dependant of that employee bringing an action against the Commonwealth, a Commonwealth authority, a licensed corporation or another employee in respect of the death of the first-mentioned employee.
- (4) Subsection (3) applies whether or not the deceased employee, before his or her death, had made an election under subsection 45(1).

45 Actions for damages—election by employees

- (1) Where:
 - (a) compensation is payable under section 24, 25 or 27 in respect of an injury to an employee; and
 - (b) the Commonwealth, a Commonwealth authority, a licensed corporation or another employee would, but for subsection 44(1), be liable for damages for any non-economic loss suffered by the employee as a result of the injury;the employee may, at any time before an amount of compensation is paid to the employee under section 24, 25 or 27 in respect of that injury, elect in writing to institute an action or proceeding against the Commonwealth, the Commonwealth authority, the licensed corporation or other employee for damages for that non-economic loss.
- (2) Where an employee makes an election:
 - (a) subsection 44(1) does not apply in relation to an action or other proceeding subsequently instituted by the employee

against the Commonwealth, the Commonwealth authority, the licensed corporation or the other employee for damages for the non-economic loss to which the election relates; and

- (b) compensation is not payable after the date of the election under section 24, 25 or 27 in respect of the injury.
- (3) An election is irrevocable.
- (4) In any action or proceeding instituted as a result of an election made by an employee, the court shall not award the employee damages of an amount exceeding \$110,000 for any non-economic loss suffered by the employee.
- (5) The election by an employee under this section to institute an action or proceeding against the Commonwealth, a Commonwealth authority, a licensed corporation or another employee does not prevent the employee, before, or instead of, formally instituting such action or proceeding, doing any other thing that constitutes an action for non-economic loss.

46 Notice of common law claims against third party

- (1) Where:
- (a) compensation is payable under this Act in respect of the death of an employee, an injury to an employee or the loss of, or damage to, property used by an employee;
- (b) the death, injury, loss or damage occurred in circumstances that appear to create a legal liability in a person (other than the Commonwealth, a Commonwealth authority, a licensed corporation or another employee) to pay damages in respect of the death, injury, loss or damage; and
- (c) the employee or a dependant of the deceased employee, as the case may be, makes a claim against that person for the recovery of such damages;

the employee or dependant must, as soon as practicable but in any event not later than 7 days after the day on which he or she first became aware of the claim, notify Comcare in writing of the claim.

Penalty: 5 penalty units

Section 47

- (2) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

47 Notice of common law claims against Commonwealth

- (1) If:

- (a) compensation is payable under this Act in respect of the death of an employee or an injury to an employee; and
- (b) the employee, or a dependant of the deceased employee, as the case may be, makes a claim for damages in respect of the death or injury against the Commonwealth, a Commonwealth authority, a licensed corporation or another employee;

the employee or dependant must, as soon as practicable but in any event not later than 7 days after the day on which he or she first became aware of the claim, notify Comcare in writing of the claim.

Penalty: 5 penalty units

- (2) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

48 Compensation not payable where damages recovered

- (1) This section applies where:

- (a) an employee recovers damages in respect of an injury to the employee or in respect of the loss of, or damage to, property used by the employee, being an injury, loss or damage in respect of which compensation is payable under this Act; or
- (b) damages are recovered by, or for the benefit of, a dependant of a deceased employee in respect of the death of the employee and compensation is payable under this Act in respect of the injury that resulted in that death.

- (2) The employee or dependant shall, not later than 28 days after the day on which the damages were recovered, notify Comcare in writing of the recovery of the damages and the amount of the damages.

Penalty: 10 penalty units.

(2A) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) If, before the recovery of the damages by, or for the benefit of, the employee or dependant, any compensation under this Act was paid to, or for the benefit of, the employee in respect of the injury, loss or damage, or to, or for the benefit of, the dependant in respect of the injury that resulted in the death of the employee, as the case may be, the employee or dependant is liable to pay to Comcare an amount equal to:
- (a) the amount of that compensation; or
 - (b) the amount of the damages;
- whichever is less.
- (4) Compensation is not payable under this Act to the employee in respect of the injury, loss or damage, or to, or for the benefit of, the dependant in respect of the injury that resulted in the death of the employee, after the date on which the damages were recovered by the employee or by, or for the benefit of, the dependant, as the case may be.
- (4A) Subsection (3) does not apply if the damages were recovered in an action for non-economic loss or by way of a settlement of such an action.
- (5) Subsection (4) does not apply if the damages were recovered:
- (a) as a result of a claim, or fresh claim, made by Comcare under section 50 (whether or not that claim progressed to the formal institution of proceedings); or
 - (b) as a result of Comcare's taking over the conduct of a claim under that section; or
 - (c) as a result of an action for non-economic loss; or
 - (d) by way of a settlement of such a claim or of such an action (whether or not that claim or that action progressed to the formal institution of proceedings).

Section 49

- (6) A reference in subsection (3) to compensation under this Act that was paid for the benefit of a dependant does not include a reference to compensation paid under subsection 17(5).
- (7) Where an employee, or a dependant of an employee, establishes to the satisfaction of Comcare that a part of the damages referred to in subsection (1) did not relate to an injury, loss or damage in respect of which compensation is payable under this Act, subsection (3) applies in relation to that employee or dependant as if the amount of the damages were an amount equal to so much of the amount of the damages as did relate to an injury, loss or damage in respect of which compensation is payable under this Act.
- (8) Subsections (3) and (4) do not apply where the damages are recovered on or after the commencement of this section in respect of a claim for damages made before that day (whether or not legal proceedings were instituted) but section 99 (other than subsection 99(1)) of the 1971 Act, as in force immediately before that day, continues to apply as if:
 - (a) references in that section to the Commonwealth were references to Comcare;
 - (b) references in that section to the Commissioner were references to Comcare;
 - (c) references in that section to compensation payable under the 1971 Act were references to compensation payable under this Act; and
 - (d) the reference in subsection 99(9) to subsection 43(5) or (7) of the 1971 Act were a reference to subsection 17(5) of this Act.
- (9) In this section, *damages* does not include an amount of damages paid to the Commonwealth in accordance with section 76 of the *Veterans' Entitlements Act 1986*.

49 Dependants not claiming compensation

- (1) Where:
 - (a) compensation is payable under this Act in respect of an injury that resulted in the death of an employee; and

- (b) damages in respect of the death of the employee are recovered by or for the benefit of a prescribed dependant of the deceased employee;
this section applies in relation to that prescribed dependant.
- (2) If the prescribed dependant is the only prescribed dependant, he or she is liable to pay to Comcare:
- (a) the amount of the compensation referred to in paragraph (1)(a); or
 - (b) the amount of the damages recovered by the prescribed dependant;
- whichever is less.
- (3) If the prescribed dependant is not the only prescribed dependant, he or she is liable to pay to Comcare:
- (a) the prescribed amount; or
 - (b) the amount of the damages recovered by the prescribed dependant;
- whichever is less.
- (4) In this section:

damages has the same meaning as in section 48.

prescribed amount means an amount calculated under the formula:

$$AC \times \frac{D1}{D2}$$

where:

AC is the amount of the compensation referred to in paragraph (1)(a);

D1 is the amount of the damages recovered by the prescribed dependant in respect of the death of the employee; and

D2 is the total amount of the damages recovered by all prescribed dependants in respect of the death of the employee.

Section 50

prescribed dependant, in relation to a deceased employee, means a dependant of that employee by whom, or on whose behalf, a claim for compensation under this Act in respect of the injury that resulted in the death of the employee has not been made or by whom, or on whose behalf, a request under section 43 relating to compensation under this Act in respect of that injury has been made.

- (5) For the purposes of this section, the amount of the compensation referred to in paragraph (1)(a):
- (a) shall be taken not to include:
 - (i) any amount of compensation that Comcare is liable to pay for the benefit of a dependant of the deceased employee, being a dependant who is not entitled to recover damages in respect of the death of the employee, whether by reason of the operation of a statute of limitations or otherwise; and
 - (ii) any amount of compensation payable under subsection 17(5); and
 - (b) shall be taken to be reduced by any amount that a dependant of the deceased employee is liable to pay to Comcare under section 48.

50 Common law claims against third parties

- (1) Where:
- (a) an amount of compensation under this Act:
 - (i) is paid to an employee in respect of an injury to the employee or in respect of the loss of, or damage to, property used by the employee; or
 - (ii) is paid for the benefit of a dependant of a deceased employee in respect of an injury that resulted in the death of the employee;
 - (b) the injury, loss, damage or death occurred in circumstances that appear to create a legal liability in a person to pay damages in respect of the injury, loss, damage or death; and

- (c) a claim against the person for the purpose of recovering such damages has not been made by the employee or by or for the benefit of the dependant, or, having been made, has not been prosecuted;

Comcare may make a claim or a fresh claim against the person in the name of the employee or dependant for the recovery of damages in respect of the injury, loss, damage or death or may take over the conduct of the existing claim, as the case requires.

- (2) If Comcare takes over the conduct of a claim, it becomes liable to pay all costs of and incidental to that claim that would otherwise be payable by the person who originally made the claim other than costs unreasonably incurred by that person.
- (3) If Comcare makes, or takes over the conduct of, a claim under this section, Comcare may:
 - (a) take whatever steps are appropriate to bring the claim to a conclusion; and
 - (b) if the claim is before a court—settle the proceedings either with or without obtaining judgment; and
 - (c) if the claim is before a court and judgment has been obtained in favour of the plaintiff—take such steps as are necessary to enforce the judgment.
- (4) The employee or dependant must sign any document relevant to a claim made or taken over by Comcare under this section (including the settlement of the claim or of any proceedings arising out of the claim), being a document that Comcare requires the employee or dependant to sign.
- (4A) If the employee or dependant fails to sign a document in accordance with a requirement under subsection (4):
 - (a) if the claim is not before a court or tribunal at the time of the failure—the Federal Court of Australia, on the application of Comcare, may direct that the document be signed on the employee or dependant's behalf by a person appointed by Comcare; and

Section 50

- (b) otherwise—the court or tribunal in which proceedings relating to the claim are being heard, on the application of Comcare, may so direct.
- (4B) If Comcare proposes to make an application under subsection (4A):
 - (a) Comcare must notify the employee or dependant concerned of the fact that it is proposing to so apply; and
 - (b) the employee or dependant concerned has a right of representation in the hearing of that application.
- (5) If Comcare makes or takes over the conduct of a claim under this section:
 - (a) the employee or dependant must comply with any reasonable requirement of Comcare for the purposes of the claim; and
 - (b) if the employee or dependant fails to comply with such a requirement, the right of the employee or dependant to compensation under this Act in respect of the injury, loss, damage or death to which the claim relates is suspended until such time as the employee or dependant complies with the requirement.
- (5A) However, paragraph (5)(b) does not operate to suspend the employee's right to compensation for the cost of medical treatment that is payable under section 16.
- (6) Where a right to compensation is suspended under subsection (5), compensation is not payable in respect of the period of the suspension.
- (7) Any damages obtained as a result of a claim made or taken over by Comcare under this section (including damages payable as a result of the settlement of such a claim) must be paid to Comcare and Comcare must deduct from the amount of those damages:
 - (a) an amount equal to the total of all amounts of compensation paid to, or for the benefit of, the employee or dependant under this Act in respect of the injury, loss, damage or death to which the claim relates; and

- (b) the amount of any costs incidental to the claim paid by Comcare.

Comcare must pay the balance (if any) to the employee or dependant.

- (8) Where Comcare pays an amount to an employee or dependant under subsection (7), the employee or dependant is not entitled to receive any further amounts of compensation under this Act in respect of the injury, loss, damage or death to which the proceedings related until the amount of compensation that would, but for this subsection, have been payable to the employee or dependant in respect of that injury, loss, damage or death equals the amount paid by Comcare to the employee or dependant under subsection (7).
- (9) In this section:

person does not include the Commonwealth, a Commonwealth authority, a licensed corporation or an employee.

51 Payment of damages by persons to Comcare

- (1) Where a person appears to be liable:
- (a) to pay damages to an employee in respect of an injury to the employee, or in respect of the loss of, or damage to, property used by the employee, being an injury, loss or damage in respect of which an amount of compensation has been paid under this Act; or
- (b) to pay damages to a dependant of a deceased employee in respect of the death of the employee, where that death resulted from an injury in respect of which an amount of compensation has been paid under this Act;

Comcare may, by notice in writing given to the person, require that:

- (c) if the person agrees to pay damages to the employee in respect of the injury, loss or damage or to the dependant in respect of the death; or
- (d) if damages against the person are awarded to the employee in proceedings arising out of a claim made in respect of the

Section 51

injury, loss or damage, or to the dependant in proceedings arising out of a claim made in respect of the death;

the person pay to Comcare so much of the amount of the damages as does not exceed the amount that would be payable by the employee or dependant to Comcare under section 48 or 49 if the damages had been paid to the employee or dependant.

(2) Subject to subsection (3), where:

(a) a person has agreed:

- (i) to pay damages to an employee in respect of an injury to the employee, or in respect of the loss of, or damage to, property used by the employee, being an injury, loss or damage in respect of which an amount of compensation has been paid under this Act; or
- (ii) to pay damages to a dependant of a deceased employee in respect of the death of the employee, where that death resulted from an injury in respect of which an amount of compensation has been paid under this Act; or

(b) damages against a person have been awarded:

- (i) to an employee in proceedings arising out of a claim made in respect of an injury to the employee or in respect of the loss of, or damage to, property used by the employee, being an injury, loss or damage in respect of which an amount of compensation has been paid under this Act; or
- (ii) to a dependant of a deceased employee in proceedings arising out of a claim made in respect of the death of the employee, where that death resulted from an injury in respect of which an amount of compensation has been paid under this Act;

Comcare may, by notice in writing given to the person, require the person to pay to Comcare so much of the amount of the damages as does not exceed the amount that would be payable by the employee or dependant to Comcare under section 48 or 49 if the damages had been paid to or in respect of the employee or dependant.

- (3) Where, before a notice under subsection (2) was received by a person, the person had paid to or in respect of the employee or dependant, all or part of the damages to which the notice related:
 - (a) if all of the damages had been paid—the notice has no force or effect; or
 - (b) if part only of the damages had been paid—the reference in that subsection to the amount of the damages shall be read as a reference to so much of that amount as had not been paid.
- (4) If a person fails to pay an amount to Comcare in accordance with a notice under this section, Comcare may recover that amount from the person in a court of competent jurisdiction as a debt due to Comcare.
- (5) The payment of an amount to Comcare by a person in accordance with a notice under this section is, to the extent of the amount paid, a discharge of the liability of that person to the employee or dependant and of the liability (if any) of the employee or dependant to Comcare under section 48 or 49.
- (6) In this section:

person does not include the Commonwealth, a Commonwealth authority, a licensed corporation or an employee.

52 Compensation not payable both under Act and under award

- (1) A person who would, but for this section, be entitled to compensation under this Act and benefits under an award in respect of the same injury, or in respect of the same loss of, or damage to, property, is not entitled to both but shall elect whether to receive the compensation or the benefits.
- (2) An election made by an employee is irrevocable.
- (3) Where an employee makes an election to receive either compensation under this Act or benefits under the award but compensation is not payable under this Act, or benefits are not payable under the award, as the case may be, in respect of the

Section 52A

injury, or the loss of, or damage to, property, the election has no effect.

- (4) Where an employee has made an election to receive compensation under this Act, that compensation is not payable unless the employee makes a claim under section 54.
- (5) Where an employee who has made an election dies, the election does not have effect in relation to his or her dependants.
- (6) In this section, **award** means an award, determination, order or agreement by which provision is made for, or in relation to, the grant of any benefits to or in relation to employees or their dependants in respect of injury or disease causing death or incapacity, or in respect of the loss of, or damage to, property, in circumstances connected with the employment of those employees, being:
 - (a) a determination made under the *Public Service Arbitration Act 1920*; or
 - (b) an award, determination or order made, or agreement entered into, under a law of the Commonwealth relating to workplace relations; or
 - (c) an award, determination or order made, or agreement entered into, under a law of a State or Territory.

52A Comcare's rights and obligations in respect of certain action for non-economic loss

- (1) If:
 - (a) an employer has paid Comcare an amount to cover liability for actions for non-economic loss brought by its employees; and
 - (b) an employee takes action for non-economic loss against the employer or another employee of the employer (the **party claimed against**);this section applies in relation to such action.
- (2) Comcare may, at any time during the course of the action to which this section applies:

- (a) take over the conduct of that action on behalf of the party claimed against in the proceeding; and
 - (b) if the action is before a court and Comcare thinks it appropriate to do so—apply to the court to join any other person as a party to the action.
- (3) If Comcare takes over the conduct of the action, it becomes liable to pay all costs of or incidental to the prosecution of the action that would otherwise be payable by the party claimed against other than costs unreasonably incurred by that party.
- (4) If Comcare takes over the conduct of an action to which this section applies, Comcare may:
 - (a) take whatever steps are appropriate to bring the proceedings to a conclusion; and
 - (b) if the action is before a court—settle the proceeding, either with or without obtaining judgment; and
 - (c) if judgment is obtained in favour of the party claimed against—take such steps as are necessary to enforce the judgment.
- (5) If Comcare takes over the conduct of an action to which this section applies, the party claimed against must comply with any reasonable requirement of Comcare for the purpose of the action including signing of any document relevant to the conduct or settlement of the action.
- (6) If the party claimed against fails to sign a document in accordance with a requirement under subsection (5):
 - (a) if the action to which this section applies is not before a court or tribunal at the time of the failure—the Federal Court of Australia, on the application of Comcare, may direct that the document be signed on the party’s behalf by a person appointed by Comcare; and
 - (b) otherwise—the court or tribunal in which proceedings relating to the action are being heard, on the application of Comcare, may so direct.
- (7) If Comcare proposes to make an application under subsection (6):

Section 52A

- (a) Comcare must notify the party concerned of the fact that it is proposing to so apply; and
 - (b) the party concerned has a right of representation in the hearing of that application.
- (8) If, in an action to which this section applies:
- (a) damages are awarded against the party claimed against; or
 - (b) a settlement is agreed on that involves the payment of an amount by the party claimed against;
- then, whether or not the conduct of that action was taken over by Comcare, Comcare must, on behalf of that party, pay any damages and costs awarded against that party in that action or any amount agreed to be paid by that party under the terms of settlement of that proceeding.
- (9) Any payment made by Comcare under subsection (8) is taken to have been made in satisfaction of the liability of the party claimed against to whom the payment relates.
- (10) If, in an action to which this section applies the conduct of which has been taken over by Comcare, any amount is payable by way of costs to the party claimed against, that amount is payable to Comcare.

Part V—Claims for compensation

53 Notice of injury or loss of, or damage to, property

- (1) This Act does not apply in relation to an injury to an employee unless notice in writing of the injury is given to the relevant authority:
 - (a) as soon as practicable after the employee becomes aware of the injury; or
 - (b) if the employee dies without having become so aware or before it is practicable to serve such a notice—as soon as practicable after the employee's death.
- (2) This Act does not apply in relation to the loss of, or damage to, property used by an employee, being a loss or damage in circumstances referred to in section 15, unless notice in writing of the accident that resulted in the loss or damage is given to the relevant authority:
 - (a) as soon as practicable after the employee becomes aware that the accident had resulted in the loss or damage; or
 - (b) if the employee dies without having become so aware or before it is practicable to serve such a notice—as soon as practicable after the employee's death.
- (3) Where:
 - (a) a notice purporting to be a notice referred to in this section has been given to the relevant authority;
 - (b) the notice, as regards the time of giving the notice or otherwise, failed to comply with the requirements of this section; and
 - (c) the relevant authority would not, by reason of the failure, be prejudiced if the notice were treated as a sufficient notice, or the failure resulted from the death, or absence from Australia, of a person, from ignorance, from a mistake or from any other reasonable cause;the notice shall be taken to have been given under this section.

Section 54

54 Claims for compensation

- (1) Compensation is not payable to a person under this Act unless a claim for compensation is made by or on behalf of the person under this section.
- (2) A claim shall be made by giving the relevant authority:
 - (a) a written claim in accordance with the form approved by Comcare for the purposes of this paragraph; and
 - (b) except where the claim is for compensation under section 16 or 17—a certificate by a legally qualified medical practitioner in accordance with the form approved by Comcare for the purposes of this paragraph.
- (3) Where a written claim, other than a claim for compensation under section 16 or 17, is given to a relevant authority under paragraph (2)(a) and the claim is not accompanied by a certificate of the kind referred to in paragraph (2)(b), the claim shall be taken not to have been made until such a certificate is given to that authority.
- (4) Where a claim is given to Comcare, Comcare shall cause a copy of the claim to be given to:
 - (a) where the employee concerned is or was a member of the Defence Force at the time when the relevant injury or accident occurred—the Secretary of the Defence Department; or
 - (b) in any other case—the principal officer of the Entity, Commonwealth authority or licensed corporation in which the employee was employed at that time.
- (5) Strict compliance with an approved form referred to in subsection (2) is not required and substantial compliance is sufficient.

55 Survival of claims

- (1) Where a person who is entitled to make a claim for compensation under this Act dies without making a claim, a claim may be made

by the person's personal representative.

- (2) A claim is not affected by the death of the claimant after the claim was served.
- (3) Section 111 applies in relation to an amount payable under a determination made in respect of a claim referred to in this section as if the deceased person had died after the determination was made.
- (4) This section does not apply in relation to a claim for compensation under section 27.

56 Claims may not be made in certain cases

Where an amount is paid to, or in accordance with the directions of, a relevant authority under subsection 17(3) or (4), for the benefit of a dependant of a deceased employee, by whom, or on whose behalf, a claim was made for compensation under section 17, no other dependant of that employee is entitled to claim compensation under that section after the day on which that amount is so paid.

57 Power to require medical examination

- (1) Where:
 - (a) a notice has been given to a relevant authority under section 53 in relation to an employee; or
 - (b) an employee has made a claim for compensation under section 54;the relevant authority may require the employee to undergo an examination by one legally qualified medical practitioner nominated by the relevant authority.
- (2) Where an employee refuses or fails, without reasonable excuse, to undergo an examination, or in any way obstructs an examination, the employee's rights to compensation under this Act, and to institute or continue any proceedings under this Act in relation to compensation, are suspended until the examination takes place.

Section 58

- (3) The relevant authority shall pay the cost of conducting any examination required under this section and is liable to pay to the employee an amount equal to the amount of the expenditure reasonably incurred by the employee in making a necessary journey in connection with the examination or remaining, for the purpose of the examination, at a place to which the employee has made a journey for that purpose.
- (4) The matters to which the relevant authority is to have regard in deciding questions arising under subsection (3) include:
 - (a) the means of transport available to the employee for the journey;
 - (b) the route or routes by which the employee could have travelled; and
 - (c) the accommodation available to the employee.
- (5) Where an employee's right to compensation is suspended under subsection (2), compensation is not payable in respect of the period of the suspension.
- (6) An employee shall not be required to undergo an examination under this section at more frequent intervals than are specified by the Minister by legislative instrument.

58 Power to request the provision of information

- (1) Where a relevant authority has received a claim and is satisfied that the claimant:
 - (a) has information or a document that is relevant to the claim;
 - or
 - (b) may obtain such information or a copy of such a document without unreasonable expense or inconvenience;the relevant authority may, by notice in writing given to the claimant, request the claimant to give that information or a copy of that document to the relevant authority within 28 days after the date of the notice or within such further period (if any) as the relevant authority, on the request of the claimant, allows.

- (2) A claimant who has received a notice under subsection (1) shall be taken to have complied with the notice if the claimant gives the relevant authority the information or document specified in the notice within 28 days after the date of notice or within such further period (if any) as the relevant authority has allowed.
- (3) Where a claimant refuses or fails, without reasonable excuse, to comply with a notice under subsection (1), the relevant authority may refuse to deal with the claim until the claimant gives the relevant authority the information, or a copy of the document, specified in the notice.

59 Certain documents to be supplied on request

- (1) A relevant authority shall:
 - (a) on request by a claimant—give to the claimant any document held by the authority that relates to the claimant's claim; or
 - (b) on request by the Commonwealth in respect of a claim affecting the Commonwealth or a Commonwealth authority—give to the Commonwealth any document held by the relevant authority that relates to the claim; or
 - (c) on request by a licensed corporation in respect of a claim affecting the corporation—give to the corporation any document held by the relevant authority that relates to the claim.
- (2) This section also applies in relation to the determination of a request under section 25 and for that purpose:
 - (a) a reference to a claim shall be read as a reference to the request under that section; and
 - (b) a reference to the claimant shall be read as a reference to the person who made the request.

Part VI—Reconsideration and review of determinations

60 Interpretation

- (1) In this Part:

claimant means a person in respect of whom a determination is made.

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

determination means a determination, decision or requirement made under section 8, 14, 15, 16, 17, 18, 19, 20, 21, 21A, 22, 24, 25, 27, 29, 29A, 30, 31, 34, 36, 37 or 39, under paragraph 114B(5)(a) or under Division 3 of Part X.

determining authority, in relation to a determination, means the person who made the determination.

reviewable decision means a decision made under subsection 38(4) or section 62.

- (2) For the purposes of this Part, the parties to proceedings instituted under this Part are:
- (a) the applicant; and
 - (b) if the applicant is not the claimant—the claimant; and
 - (c) the body responsible for the reviewable decision.
- (3) For the purposes of subsection (2), the body responsible for the reviewable decision is:
- (a) if Comcare made the reviewable decision—Comcare; and
 - (b) if the reviewable decision has been made by or on behalf of a licensee—the licensee.
- (4) Subsection (2) has effect subject to Part VIII.

61 Determinations to be notified in writing

- (1A) The determining authority must consider and determine each claim for compensation under section 14 within the period prescribed by the regulations.
- (1) As soon as practicable after a determining authority makes a determination, it shall cause to be served on the claimant a notice in writing setting out:
- (a) the terms of the determination;
 - (b) the reasons for the determination; and
 - (c) a statement to the effect that the claimant may, if dissatisfied with the determination, request a reconsideration of the determination under subsection 62(2).
- (2) This section does not apply in relation to a determination under subsection 16(1) that compensation of an amount equal to the full amount of the cost of medical treatment obtained by an employee is payable if that amount of compensation is payable to a person other than the employee.

62 Reconsideration of determinations

- (1) A determining authority may, on its own motion:
- (a) reconsider a determination made by it; or
 - (b) cause such a determination to be reconsidered by a person to whom its power under this section is delegated, being a person other than the person who made, or was involved in the making of, the determination;
- whether or not a proceeding has been instituted or completed under this Part in respect of a reviewable decision made in relation to that determination.
- (2) A request to a determining authority to reconsider a determination made by it may be made by:
- (a) the claimant; or
 - (b) if the determination affects the Commonwealth—the Commonwealth; or

Section 63

- (c) if the determination affects a Commonwealth authority—that Commonwealth authority.
- (2A) If a determining authority holds a licence under Part VIII that is subject to conditions requiring the determining authority to arrange for the reconsideration by another person of any determination made by the determining authority, nothing in subsection (1) or (2) is to be taken to derogate from that requirement.
- (3) A request for reconsideration of a determination shall:
 - (a) set out the reasons for the request; and
 - (b) be given to the determining authority within 30 days after the day on which the determination first came to the notice of the person making the request, or within such further period (if any) as the determining authority, either before or after the expiration of that period, allows.
- (4) On receipt of a request, the determining authority shall reconsider the determination or cause the determination to be reconsidered by a person to whom its power under this section is delegated, being a person other than a person who made, or was involved in the making of, the determination.
- (5) Where a person reconsiders a determination, the person may make a decision affirming or revoking the determination or varying the determination in such manner as the person thinks fit.
- (6) The determining authority or person must decide a request made by a claimant to reconsider a determination within the period prescribed by the regulations.

63 Reviewable decision to be notified in writing

As soon as practicable after a person makes a reviewable decision, the person shall cause to be served on the claimant a notice in writing setting out:

- (a) the terms of the decision;
- (b) the reasons for the decision; and

- (c) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates.

64 Applications to the Administrative Appeals Tribunal

- (1) Application to the Administrative Appeals Tribunal for review of a reviewable decision may be made by:
 - (a) the claimant; or
 - (b) if the decision affects the Commonwealth—the Commonwealth; or
 - (c) if the decision affects a Commonwealth authority—the Commonwealth authority; or
 - (d) if the decision affects a corporation that holds a licence under Part VIII—the licensed corporation.
- (3) Despite section 27 of the *Administrative Appeals Tribunal Act 1975*, a person may not make an application to the Administrative Appeals Tribunal for a review of a reviewable decision except as provided by subsection (1) of this section.

65 Modifications of the *Administrative Appeals Tribunal Act 1975*

- (1) This section has effect for the purposes of the application of the *Administrative Appeals Tribunal Act 1975* (in this section called ***the Act***) in relation to a reviewable decision.
- (3) Section 18C of the Act has effect as if the reference to places in Australia or an external Territory were a reference to any place, whether within or outside Australia.
- (4) Subsection 29(2) of the Act has effect as if the reference to “the twenty-eighth day” (first occurring) were a reference to “the sixtieth day”.

Section 66

66 Evidence in proceedings before Administrative Appeals Tribunal

(1) Where:

- (a) a claimant who has instituted proceedings under this Part seeks to adduce any matter in evidence before the Administrative Appeals Tribunal in those proceedings; and
- (b) the claimant had not disclosed that matter to the Tribunal at least 28 days before the day fixed for the hearing of those proceedings;

that matter is not admissible in evidence in those proceedings without the leave of the Tribunal.

(2) Where:

- (a) a determining authority has determined a claim and, before doing so, gave the claimant a notice under section 58 requesting the claimant to give the authority the information, document or copy of the document, specified in the notice;
- (b) the claimant failed to comply with the notice; and
- (c) the claimant had the information, document or copy, or could have obtained the information, document or copy without unreasonable expense or inconvenience before the determination was made;

the information, document or copy shall not, without leave of the Administrative Appeals Tribunal, be admissible in proceedings instituted under this Part in relation to the determination.

(3) The Administrative Appeals Tribunal shall not give leave under subsection (2) unless:

- (a) the claimant provides a statement of reasons why he or she failed to comply with the notice under section 58; and
- (b) the Tribunal is satisfied that there are special circumstances justifying the admission of the information, document or copy in evidence.

67 Costs of proceedings before Administrative Appeals Tribunal

- (1A) In this section, *responsible authority*, in relation to a determination, means:
- (a) if the determination affected the Commonwealth or a Commonwealth authority other than a licensed authority—Comcare; and
 - (b) if the determination affected a Commonwealth authority, or a corporation, that holds a licence under Part VIII authorising acceptance of liability for claims in respect of which the determination is made—that authority or corporation; and
 - (c) if the determination affected a Commonwealth authority that holds a licence under Part VIII but the licence does not authorise acceptance of liability for claims in respect of which the determination is made—Comcare.
- (1) Subject to this section, the costs incurred by a party to proceedings instituted under this Part in respect of that reviewable decision shall be borne by that party.
- (2) Subject to this section, where a proceeding instituted under this Part in respect of a reviewable decision relating to a determination is rendered abortive because a decision has been made, following a reconsideration under subsection 62(1), varying or revoking that determination, the responsible authority is liable to reimburse the claimant for costs reasonably incurred by the claimant in connection with that proceeding.
- (3) Where:
- (a) a determining authority has determined a claim (in this subsection called the *original determination*);
 - (b) the authority, before making that determination, gave the claimant a notice under section 58 requesting the claimant to give it the information specified in the notice (in this subsection called the *relevant information*);
 - (c) the claimant failed to comply with the notice;

Section 67

- (d) at the time when the authority determined the claim, it did not have the relevant information nor was the relevant information reasonably available to it;
 - (e) after the claim was determined, the claimant disclosed the relevant information to the authority or to the Administrative Appeals Tribunal;
 - (f) the authority reconsidered the original determination under subsection 62(1) and made a determination more favourable to the claimant than the original determination;
 - (g) the authority is satisfied that, if it had had the relevant information at the time when the original determination was made, it would have made a determination more favourable to the claimant than the original determination; and
 - (h) the responsible authority would, but for subsection (5), be liable under subsection (2), to reimburse the claimant for costs reasonably incurred by the claimant;
- the determining authority may make a declaration, in writing, that subsection (2) does not apply to those costs.

(4) Where:

- (a) a determining authority has determined a claim (in this section called the **original determination**);
- (b) the authority, before making that determination, gave the claimant a notice under section 58 requesting the claimant to give it a document, or a copy of the document, specified in the notice (in this subsection called the **relevant document**);
- (c) the claimant failed to comply with the notice;
- (d) at the time when the authority determined the claim, it did not have the information contained in the relevant document nor was that information reasonably available to it;
- (e) after the claim was determined, the claimant gave the document, or a copy of the document, or the information contained in the relevant document, to the authority or to the Administrative Appeals Tribunal;
- (f) the authority reconsidered the original determination under subsection 62(1), and made a determination more favourable to the claimant than the original determination;

- (g) the authority is satisfied that, if it had had the information contained in the relevant document at the time when the original determination was made, it would have made a determination more favourable to the claimant than the original determination; and
 - (h) the responsible authority would, but for subsection (5), be liable, under subsection (2), to reimburse the claimant for costs reasonably incurred by the claimant;
- the determining authority may make a declaration, in writing, that subsection (2) does not apply in relation to those costs.
- (5) Where a determining authority makes a declaration under subsection (3) or (4) that subsection (2) does not apply in relation to costs incurred by a claimant, subsection (2) does not apply in relation to those costs.
 - (6) A determining authority shall give a copy of a declaration made by it under subsection (3) or (4) to the claimant.
 - (7) Application may be made to the Administrative Appeals Tribunal for review of a decision by a determining authority to make a declaration under subsection (3) or (4).
 - (8) Where, in any proceedings instituted by the claimant, the Administrative Appeals Tribunal makes a decision:
 - (a) varying a reviewable decision in a manner favourable to the claimant; or
 - (b) setting aside a reviewable decision and making a decision in substitution for the reviewable decision that is more favourable to the claimant than the reviewable decision;the Tribunal may, subject to this section, order that the costs of those proceedings incurred by the claimant, or a part of those costs, shall be paid by the responsible authority.
 - (8A) Subject to this section, the Administrative Appeals Tribunal may order that the costs incurred by the claimant of any proceedings instituted by the Commonwealth be paid by:
 - (a) if the Tribunal varies the relevant reviewable decision in a manner less favourable to the claimant, or sets aside the

Section 67

- relevant reviewable decision and substitutes a decision that is less favourable to the claimant—Comcare; or
- (b) in any other case—the Commonwealth.
- (8B) Subject to this section, if in any proceedings instituted by a licensed authority or a licensed corporation, the Tribunal affirms the reviewable decision or varies that decision in a manner more favourable to the claimant, or sets aside the relevant reviewable decision and substitutes a decision that is more favourable to the claimant, the Administrative Appeals Tribunal may order that the costs of the proceedings incurred by the claimant be paid by the responsible authority.
- (9) Where the Administrative Appeals Tribunal gives a decision setting aside a reviewable decision and remitting the case for re-determination by the determining authority, the Tribunal shall, subject to this section, order that the costs of the proceedings before it incurred by the claimant shall be paid by the responsible authority.
- (10) Nothing in subsection (8), (8A) or (9) authorises the Administrative Appeals Tribunal to order a person to pay any costs incurred by a claimant in relation to an application for an extension of time for applying to the Tribunal for a review of a reviewable decision.
- (11) Where, in any proceedings, the Administrative Appeals Tribunal varies or sets aside a reviewable decision, the Tribunal shall not make an order under subsection (8) or (9) in favour of a claimant in relation to the costs of those proceedings if:
- (a) the authority, before making the reviewable decision, gave the claimant a notice under section 58 requesting the claimant to give Comcare or authority information specified in the notice (in this subsection called the *relevant information*); and
- (b) the Tribunal is satisfied that:
- (i) the claimant failed to comply with that notice;
- (ii) at the time when the authority made the reviewable decision, it did not have the relevant information, nor

- was the relevant information reasonably available to it;
and
- (iii) if the authority had had the relevant information at the time when it made the reviewable decision it would have made a decision more favourable to the claimant than the reviewable decision.
- (12) Where, in any proceedings, the Administrative Appeals Tribunal varies or sets aside a reviewable decision, the Tribunal shall not make an order under subsection (8) or (9) in favour of a claimant in relation to the costs of those proceedings if:
- (a) the determining authority, before making the reviewable decision, gave the claimant a notice under section 58 requesting the claimant to give the authority a copy of the document specified in the notice (in this subsection called the **relevant document**); and
- (b) the Tribunal is satisfied that:
- (i) the claimant failed to comply with that notice;
- (ii) at the time when the authority made the reviewable decision, it did not have the information contained in the relevant document, nor was that information reasonably available to it; and
- (iii) if the authority had had the information contained in the relevant document at the time when it made the reviewable decision it would have made a decision more favourable to the claimant than the reviewable decision.
- (13) Where the Administrative Appeals Tribunal orders a responsible authority to pay costs incurred by a claimant, the Tribunal may, in the absence of agreement between the parties as to the amount of the costs, tax or settle the amount of the costs or order that the costs be taxed by the Registrar or an officer of the Tribunal.
- (14) For the purposes of section 69A of the *Administrative Appeals Tribunal Act 1975*, the responsible authority is taken to be a party to the proceeding before the Administrative Appeals Tribunal.

Part VII—Administration and finance

Division 1—Comcare

68 Establishment

This section establishes a body called Comcare.

69 Functions

Subject to this Act, Comcare has the following functions, in addition to its other functions under this Act:

- (a) to make determinations accurately and quickly in relation to claims and requests made to Comcare under this Act;
- (b) to minimise the duration and severity of injuries to its employees and employees of exempt authorities by arranging quickly for the rehabilitation of those employees under this Act;
- (c) to co-operate with other bodies or persons with the aim of reducing the incidence of injury to employees;
- (d) to conduct and promote research into the rehabilitation of employees and the incidence and prevention of injury to employees;
- (da) to promote the adoption in Australia and elsewhere of effective strategies and procedures for the rehabilitation of injured workers;
- (e) to publish material relating to any of the functions referred to in paragraphs (a), (c) and (d) and relating to the rehabilitation of employees under this Act;
- (ea) in respect of actions for non-economic loss—to take over the conduct of such actions under section 52A on behalf of the Commonwealth, Commonwealth authorities or employees against whom such actions were taken;
- (eb) to determine the premiums payable by Entities and Commonwealth authorities in respect of the financial year starting on 1 July 2002 and each subsequent financial year

- and, where appropriate, the special premiums payable by Entities and Commonwealth authorities in respect of one or more of the financial years starting on 1 July 1999, 1 July 2000 or 1 July 2001, and to collect such premiums and special premiums;
- (ec) to apply such premiums and special premiums, together with interest earned on those premiums, in meeting:
- (i) Comcare's liability under this Act in relation to compensation in respect of injuries suffered, whether before, on or after 1 July 2002, by employees of such Entities and authorities; and
 - (ii) Comcare's liability under this Act for payment, on behalf of such Entities, authorities and employees, of damages or costs awarded under, or of amounts agreed to be paid in settlement of, actions for non-economic loss in respect of such injuries or for costs in proceedings against third parties; and
 - (iii) the cost incurred by Comcare in managing such claims for compensation and in conducting such actions for non-economic loss and claims against third parties;
- (eca) to determine, under section 97CA, 97CB or 97CC, the amount of any exit contributions payable by bodies corporate, and by the Australian Capital Territory, and to collect such contributions;
- (ecb) to apply exit contributions paid under section 97CA, 97CB or 97CC as a result of a body corporate or the Australian Capital Territory ceasing to be a Commonwealth authority, together with interest earned on those exit contributions, in the same way as paragraph (ec) would have required Comcare to apply:
- (i) premiums paid by the body corporate or the Australian Capital Territory; and
 - (ii) interest earned on those premiums;
- if the body corporate or the Australian Capital Territory had not ceased to be a Commonwealth authority;
- (ed) to determine, under section 97D, the amount of the regulatory contributions payable by Entities, and by

Section 69

- Commonwealth authorities, and to collect such contributions;
- (eda) to determine, under section 97DA, the amount of any regulatory contributions payable by bodies corporate, and by the Australian Capital Territory, and to collect such contributions;
- (ee) to collect application and licence fees payable under Part VIII by Commonwealth authorities and eligible corporations;
- (ef) to apply such regulatory contributions and application and licence fees, together with interest earned on those contributions and fees, in meeting:
- (i) the cost incurred by the Commission and Comcare in carrying out their respective functions under this Act (other than a function referred to in paragraph (ec) or (ecb)); and
 - (ii) the cost incurred by the Commission and Comcare in carrying out their respective functions under the *Occupational Health and Safety Act 1991*, the *Work Health and Safety Act 2011* and the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011*.
- (f) to maintain contact with each rehabilitation authority to the extent necessary to ensure that, in performing or exercising its functions or powers under Part III, the authority is complying with any guidelines issued under section 41;
- (fa) to advise the Minister about anything relating to Comcare's functions and powers;
- (fb) such other functions as are conferred on Comcare by the regulations;
- (g) such other functions as are conferred on Comcare by any other Act.

Note: Functions have also been conferred on Comcare by other Acts, such as the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005*, the *Parliamentary Entitlements Act 1990* and the *Work Health and Safety Act 2011*.

70 Powers

Comcare has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

70A Comcare may charge for certain services

Without limiting the generality of section 70, Comcare may enter into an arrangement with the principal officer of an Entity or a Commonwealth authority, or any other person, under which:

- (a) Comcare will provide to the Entity, authority or other person specified services related to the performance by Comcare of its functions; and
- (b) the Entity, authority or other person will pay to Comcare such amount as is agreed between them for the provision of those services.

70B Formation and activities of Comcare subsidiaries

- (1) Without limiting the generality of section 70, Comcare may form incorporated companies for the purposes of the performance of its functions or for the performance of functions under this Act that may be performed by subsidiaries of Comcare.
- (2) Section 86 of the *Public Governance, Performance and Accountability Act 2013* (which deals with subsidiaries of corporate Commonwealth entities) does not apply to Comcare in relation to the activities of Comcare subsidiaries under Part VIII or contracts referred to in that Part.

71 Power to obtain information from Departments and authorities

- (1) Without limiting the generality of section 70, Comcare may, by notice in writing, require the principal officer of an Entity, a Commonwealth authority or a licensed corporation to give Comcare, within such period as is specified in the notice, such documents or information (or both) as are specified in the notice, being documents or information in the possession, custody or control of the Entity or authority that are relevant to a claim made

Section 72

by, or in relation to, an employee of the Entity or authority or that relate to the performance of functions or the exercise of powers by the principal officer under Part III.

- (2) A principal officer to whom a notice is given shall comply with the notice without delay.

72 Manner in which claims are to be determined

In performing the function referred to in paragraph 69(a), Comcare:

- (a) shall be guided by equity, good conscience and the substantial merits of the case, without regard to technicalities;
- (b) is not required to conduct a hearing; and
- (c) is not bound by the rules of evidence.

72A Duty to assist the Commission and the Seafarers Safety, Rehabilitation and Compensation Authority

- (1) Comcare must give the Commission such secretarial and other assistance, and make available to it the services of such members of Comcare's staff and such other resources, as the Commission reasonably requires from time to time for the proper performance of its functions or exercise of its powers.
- (2) Comcare must:
- (a) give the Seafarers Safety, Rehabilitation and Compensation Authority (established under section 103 of the *Seafarers Rehabilitation and Compensation Act 1992*) such secretarial and other assistance; and
 - (b) make available to the Authority the services of such members of Comcare's staff and such other resources;
- as the Authority reasonably requires from time to time for the proper performance of its functions or exercise of its powers.

73 Directions by Minister

- (1) The Minister may, by notice in writing given to the Chief Executive Officer, give a direction to Comcare with respect to the performance of its functions or the exercise of its powers under this Act, the *Parliamentary Entitlements Act 1990* or the *Work Health and Safety Act 2011*, otherwise than in relation to a particular case.
- (2) Comcare shall comply with a direction given under subsection (1).
- (3) This section does not affect the application of section 22 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the application of government policy to corporate Commonwealth entities) in relation to Comcare.

73A Guidelines by Commission

- (1) The Commission may prepare and issue to the Chief Executive Officer written general policy guidelines in relation to the operation of this Act or any other Act (except the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005* or the *Parliamentary Entitlements Act 1990*) to the extent that the Act confers functions or powers on Comcare.
- (2) The Commission may prepare and issue to the principal officer of a licensee written general policy guidelines in relation to the operation of this Act to the extent that the Act confers functions or powers on the licensee.
- (3) The Commission must not issue guidelines that are inconsistent with any directions under section 73 of this Act.
- (4) Any guidelines that are inconsistent with a direction of the kind referred to in subsection (3) have no effect to the extent of the inconsistency.
- (5) Comcare must comply with any guidelines issued and in force under subsection (1).
- (6) A licensee and any person acting on its behalf must comply with any guidelines issued and in force under subsection (2).

Section 73B

73B Delegation by Comcare

Comcare may, in writing, delegate to an officer of, or a person employed by, the Commonwealth or a Commonwealth authority all or any of Comcare's functions and powers other than the functions and powers of Comcare under the *Work Health and Safety Act 2011*.

Note 1: In certain circumstances Comcare requires the consent of the Minister before delegating the function conferred on it by section 12 of the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005* or a power to do anything in connection with the performance of that function: see section 14 of that Act.

Note 2: The delegation of Comcare's functions and powers under the *Work Health and Safety Act 2011* is dealt with in section 154 of that Act.

74 Constitution of Comcare

(1) Comcare:

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

Note: The *Public Governance, Performance and Accountability Act 2013* applies to Comcare. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

(1A) Comcare is constituted by a Chief Executive Officer appointed by the Governor-General.

- (2) Comcare's common seal must be kept in such custody as the Chief Executive Officer directs and must not be used except as authorised by the Chief Executive Officer.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of Comcare appearing on a document and shall presume that it was duly affixed.

- (4) Comcare is not subject to any requirement, obligation, liability, penalty or disability under a law in force in a State or Territory to which the Commonwealth is not subject.

76 The Chief Executive Officer

- (1) The Chief Executive Officer holds office for the term (not longer than 5 years) specified in the instrument of appointment, but is eligible for re-appointment on 2 occasions after his or her first appointment.

Note: The Chief Executive Officer is the accountable authority of Comcare for the purposes of the *Public Governance, Performance and Accountability Act 2013*. See section 12 of that Act and subsection 74(1A) of this Act.

- (2) The Chief Executive Officer holds office on a full-time basis and must not engage in paid employment outside the duties of the office without the Minister's approval.
- (3) The Minister must not give an approval unless satisfied that the paid employment will not interfere with the Chief Executive Officer's performance of his or her duties.

79 Persons acting as Chief Executive Officer

- (1) Subject to subsection (2), the Deputy Chief Executive Officer shall act as the Chief Executive Officer:
- (a) during a vacancy in the office of the Chief Executive Officer, whether or not an appointment has previously been made to the office; or
 - (b) during any period when the Chief Executive Officer is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his or her office;
- but shall not continue to act during a vacancy for more than 12 months.

Note: For rules that apply to persons acting as the Chief Executive Officer, see section 33A of the *Acts Interpretation Act 1901*.

Section 80

- (2) The Deputy Chief Executive Officer shall not act as the Chief Executive Officer while a person appointed under subsection (4) is acting as the Chief Executive Officer.
- (4) The Governor-General may appoint a person to act as the Chief Executive Officer:
 - (a) during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to the office; or
 - (b) during any period or during all periods when the Chief Executive Officer is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

80 Remuneration and allowances

- (1) The Chief Executive Officer is to be paid such remuneration as is determined by the Remuneration Tribunal, but, if no such determination is in operation, the Chief Executive Officer is to be paid such remuneration as is prescribed.
- (3) The Chief Executive Officer is to be paid such allowances as are prescribed.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

81 Leave of absence

- (1) The Chief Executive Officer has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Chief Executive Officer leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

83 Resignation

The Chief Executive Officer may resign by delivering to the Governor-General a signed notice of resignation.

84 Termination of appointment

- (1) The Governor-General may terminate the Chief Executive Officer's appointment for misbehaviour or physical or mental incapacity.
- (2) If the Chief Executive Officer:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (b) contravenes section 89M without reasonable excuse; or
 - (c) is absent from 3 consecutive meetings of the Commission, or is absent from duty for 14 consecutive days, or for 28 days in any period of 12 months, except on leave of absence; or
 - (d) engages in paid employment outside the duties of his or her office without the Minister's approval;

the Governor-General is to terminate the Chief Executive Officer's appointment by notice in the *Gazette*.

Note: The appointment of the Chief Executive Officer may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

85 Annual report

The annual report prepared by the Chief Executive Officer and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include particulars of each direction given under section 73 of this Act during the period.

Division 2—Deputy Chief Executive Officer, staff and consultants

86 Deputy Chief Executive Officer

- (1) There shall be a Deputy Chief Executive Officer.
- (2) The Deputy Chief Executive Officer shall be an APS employee who is performing the duties of such position in Comcare as the Minister designates, in writing signed by the Minister, for the purpose of this section.

87 Duties of Deputy Chief Executive Officer

The Deputy Chief Executive Officer shall assist the Chief Executive Officer as directed by the Chief Executive Officer.

88 Staff

- (1) The staff of Comcare comprises:
 - (a) persons engaged under the *Public Service Act 1999* for the purposes of Comcare; and
 - (b) such other persons (if any) as Comcare thinks necessary to employ to assist Comcare in the performance of its functions and the exercise of its powers.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Chief Executive Officer and the APS employees assisting the Chief Executive Officer together constitute a Statutory Agency; and
 - (b) the Chief Executive Officer is the Head of that Statutory Agency.
- (3) Persons employed under paragraph (1)(b) shall be employed under an agreement in writing.

- (4) The terms and conditions of employment of persons employed under paragraph (1)(b) are such as are from time to time determined by the Chief Executive Officer.

89 Consultants

- (1) The Chief Executive Officer may engage, under agreements in writing, persons having suitable qualifications and experience to perform services as consultants to Comcare.
- (2) The terms and conditions of engagement of persons referred to in subsection (1) are such as are from time to time determined by the Chief Executive Officer.

Division 3—The Commission

89A Establishment

This section establishes a commission called the Safety, Rehabilitation and Compensation Commission.

89B Functions

The Commission has the following functions, in addition to its other functions under this Act:

- (a) to ensure that, as far as practicable, there is equity of outcomes resulting from administrative practices and procedures used by Comcare and a licensee in the performance of their respective functions;
- (b) to advise the Minister about anything relating to the operation of this Act or to the Commission's functions and powers;
- (c) such other functions as are conferred on the Commission by any other Act.

Note: Functions have also been conferred on the Commission by the *Work Health and Safety Act 2011*.

89C Powers

The Commission has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

89D Directions by Minister

- (1) The Minister may, by notice in writing given to the Chairperson, give a direction to the Commission with respect to the performance of its functions or the exercise of its powers under this Act or the *Work Health and Safety Act 2011*.

- (2) The Commission must comply with a direction given under subsection (1).

89E Constitution

- (1) The Commission comprises the following:
- (a) a Chairperson;
 - (c) 3 members nominated by the Australian Council of Trade Unions;
 - (d) a member who, in the Minister's opinion, represents the licensees;
 - (e) a member who, in the Minister's opinion, represents the Commonwealth, and Commonwealth authorities other than licensed authorities;
 - (f) the Chief Executive Officer of Safe Work Australia;
 - (fa) a member who, in the Minister's opinion, represents the interests of members and former members of the Defence Force;
 - (fb) a member who has been nominated by the Chief Minister for the Australian Capital Territory and who, in the Minister's opinion, represents the interests of the Australian Capital Territory's public sector employers;
 - (g) 2 members with qualifications or experience relevant to the Commission's functions, or the exercise of its powers.
- (2) The performance of the Commission's functions, or the exercise of its powers, is not affected merely because of a vacancy in its membership.

Note: The Commissioners are not the accountable authority of Comcare for the purposes of the *Public Governance, Performance and Accountability Act 2013*. See section 12 of that Act and subsection 74(1A) of this Act.

89F Appointment

- (1) The members (other than the member mentioned in paragraph 89E(1)(f)) are to be appointed by the Minister by written instrument.

Section 89G

- (2) Before appointing the member mentioned in paragraph 89E(1)(d), the Minister must consult the licensees.

89G Term of office

A member holds office on a part-time basis for the term (not longer than 3 years) specified in the instrument of appointment, but is eligible for re-appointment.

89H Deputies of members

- (1) A member (other than the Chairperson) may, with the Minister's approval, appoint a person to be the member's deputy.
- (2) A person must not be appointed to be the deputy of the member referred to in paragraph 89E(1)(f) unless the person is a member of the staff of Safe Work Australia referred to in subsection 59(1) of the *Safe Work Australia Act 2008*.
- (3) A member may revoke the appointment of his or her deputy, but the revocation is not effective until the member has given written notice of the revocation to the Minister.
- (4) If a member who has appointed a deputy is absent from a meeting of the Commission, the deputy is entitled to attend that meeting and, when so attending, is taken to be a member.
- (5) A deputy may resign by delivering to the member who appointed him or her a signed notice of resignation.
- (6) Anything done by or in relation to a deputy purporting to act under this section is not invalid merely because:
 - (a) there is a defect or irregularity in connection with the appointment; or
 - (b) the appointment had ceased to have effect; or
 - (c) the occasion for the deputy to act had not arisen or had ceased.

89J Acting Chairperson

The Minister may appoint a person to act in the office of Chairperson:

- (a) during a vacancy in that office, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

89K Remuneration and allowances

- (1) A member is to be paid such remuneration as is determined by the Remuneration Tribunal, but, if no such determination is in operation, the member is to be paid such remuneration as is prescribed.
- (2) A deputy of a member is to be paid, in respect of the deputy's attendance at a meeting of the Commission, such fee as is determined by the Remuneration Tribunal, but, if no such determination is in operation, the deputy is to be paid such fee as is prescribed.
- (3) A member and the deputy of a member are to be paid such allowances as are prescribed.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

89L Leave of absence

The Minister may grant a member leave to be absent from one or more meetings of the Commission on such conditions as the Minister thinks fit.

Section 89M

89M Disclosure of interests

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Commission.
- (2) A disclosure must be recorded in the minutes of the meeting of the Commission and the member must not, unless the Minister or the Commission otherwise determines:
 - (a) be present during any deliberation of the Commission with respect to that matter; or
 - (b) take part in any decision of the Commission with respect to that matter.
- (3) For the purpose of the making of a determination by the Commission under subsection (2) in relation to a member who has made a disclosure, a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Commission for the purpose of making the determination; or
 - (b) take part in the making by the Commission of the determination.
- (4) In this section:

member includes:

 - (a) a person who is acting in the office of a member or is taken to be a member; and
 - (b) the Chief Executive Officer.

89N Resignation

A member may resign by delivering to the Minister a signed notice of resignation.

89P Termination of appointment

- (1) The Minister may terminate a member's appointment for misbehaviour or physical or mental incapacity.
- (2) If a member:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (b) contravenes section 89M without reasonable excuse; or
 - (c) is absent, except on leave granted under section 89L, from 3 consecutive meetings of the Commission;the Minister is to terminate the member's appointment by notice in the *Gazette*.
- (3) If the organisation on whose nomination a member referred to in paragraph 89E(1)(c) was appointed asks (by written notice to the Minister) that the member's appointment be terminated, the Minister is to terminate the member's appointment by notice in the *Gazette*.

89Q Meetings

- (1) Subject to this section, meetings of the Commission are to be held at such times and places as it determines from time to time.
- (2) The Chairperson:
 - (a) may convene a meeting of the Commission; and
 - (b) must convene a meeting of the Commission on receipt of a written request signed by at least 4 members.
- (3) The Commission must hold at least 3 meetings each calendar year.
- (4) At a meeting of the Commission, 5 members constitute a quorum if:
 - (a) at least one of them is a member referred to in paragraph 89E(1)(c); and

Section 89R

- (b) one of them is the member referred to in paragraph 89E(1)(d); and
 - (c) one of them is the member referred to in paragraph 89E(1)(e).
- (5) Questions arising at a meeting of the Commission must be determined by the majority of the votes of the members present and voting at the meeting.
 - (6) If the Commission so determines, a resolution is taken to have been passed at a meeting of the Commission if, without meeting, a majority of the members who would, if present at a meeting and entitled to vote on the resolution at that meeting, have constituted a quorum indicate agreement with the resolution in accordance with a method determined by the Commission.
 - (7) The Chairperson is to preside at all meetings of the Commission at which he or she is present.
 - (8) If the Chairperson is not present at a meeting of the Commission, the members present at the meeting must elect one of their number to preside at the meeting.
 - (9) The member presiding at a meeting of the Commission has a deliberative vote and, if there is an equality of votes, also has a casting vote.
 - (10) Subject to this section, the Commission may determine the procedure to be followed at its meetings.
 - (11) In this section:

member includes the Chief Executive Officer.

89R Delegation by Commission and sub-delegation

- (1) Subject to subsection (1A), the Commission may, in writing, delegate to the Chief Executive Officer or any of its members all or any of its functions and powers.

Section 89S

- (1A) The Commission must not delegate to the Chief Executive Officer any of its functions or powers under the *Work Health and Safety Act 2011*.
- (2) Despite paragraph 34AB(1)(b) of the *Acts Interpretation Act 1901*, the Chief Executive Officer may, by writing signed by him or her, delegate to the Deputy Chief Executive Officer or a member of the staff of Comcare any functions or powers that the Commission delegates to the Chief Executive Officer.
- (3) Despite paragraph 34AB(1)(b) of the *Acts Interpretation Act 1901*, a member may, by writing signed by him or her, delegate to the Chief Executive Officer, the Deputy Chief Executive Officer or a member of the staff of Comcare any functions or powers that the Commission delegates to the member.

89S Annual reports

- (1) As soon as possible after each 30 June, the Chairperson must give the Minister, for presentation to the Parliament, a report of the Commission's activities during the financial year that ended on that day.
- (2) A report under this section must include particulars of:
 - (a) any directions given by the Minister under section 89D; and
 - (b) any guidelines issued by the Commission under section 73A; and
 - (c) the operations of each licensee under this Act; during the financial year to which the report relates.

Division 4—Finance

90B Payments to Comcare in respect of long-term liabilities

There are payable to Comcare, out of the Consolidated Revenue Fund, such amounts as are necessary:

- (a) to enable Comcare to discharge any liability that is taken, by section 128, to have been incurred by Comcare and has not been discharged before the commencement of this section; and
- (ab) to enable Comcare to discharge a liability incurred because of an event or process that:
 - (i) happened or commenced before 1 December 1988; and
 - (ii) results in an injury, loss or damage that first manifests itself on or after 1 December 1988.

Example: An event—a person's inhalation of asbestos fibres—that happened before 1 December 1988 and results in an injury, loss or damage—the person's contraction of mesothelioma—that manifests itself on or after 1 December 1988.

- (b) to meet any administrative expenses incurred by Comcare after the commencement of this section that are attributable to the performance by Comcare of its functions in respect of claims for a liability mentioned in paragraph (a) or (ab).

90C Source of funds to enable Comcare to meet its liabilities and other expenses

- (1) Subject to this section, Comcare must pay, from Comcare-retained funds, the money required by Comcare:
 - (a) to enable it to discharge:
 - (i) any liability in relation to compensation (other than a liability referred to in paragraph 90B(a) or (ab)) that was incurred by Comcare or by the previous Commission under this Act but that has not been discharged before 1 July 2002; and

- (ii) any liability in relation to compensation that Comcare incurs under this Act on or after that date; and
 - (b) to enable it to pay, on behalf of an Entity or Commonwealth authority:
 - (i) any damages or costs awarded under, or any amount agreed to be paid in settlement of, an action for non-economic loss, that Comcare or the previous Commission was liable to pay but that had not been paid before 1 July 2002; and
 - (ii) any damages awarded under, or amount agreed to be paid in settlement of, an action for non-economic loss, that Comcare becomes liable to pay on and after that date; and
 - (c) to meet any administrative expenses incurred by it on or after that date that are attributable to the performance of its functions in respect of claims for injury, loss or damage suffered by, or for the death of, an employee on or after 1 July 1989.
- (2) If there is insufficient money in Comcare-retained funds to make a particular payment under subsection (1), there is payable by the Commonwealth to Comcare such an amount as is necessary to enable Comcare to make that payment.
- (3) A payment (the relevant payment) is not to be made to Comcare under subsection (2) if the amount of the relevant payment exceeds an amount worked out at the time of the payment using the formula:

$$\text{Premiums received} + \text{Notional interest} - \text{Previous payments}$$

where:

notional interest means an amount of notional interest, being the interest at such rates as are from time to time determined by the Finance Minister that would have accrued, on or after 1 July 1989 and before the relevant payment is made, in respect of the premiums received if such interest had been payable to the previous Commission and to Comcare.

Section 90C

premiums received means the total amount of the premiums paid, or notionally paid, to the Commonwealth in respect of financial years or parts of financial years starting on 1 July 1989 and ending before 1 July 2002, in accordance with a direction of the Minister under section 96G of the *Safety, Rehabilitation and Compensation Act 1988* as in force from time to time during that period.

previous payments means the total of the amounts paid by the Commonwealth to the previous Commission or to Comcare for the purposes of the performance of their functions under this Act before the relevant payment is made.

- (4) For the purpose of the application on, or at any time after, 1 July 2002 of the formula referred to in subsection (3), the Finance Minister may determine:
- (a) the total of the amounts of the premiums paid, or notionally paid, to the Commonwealth in respect of financial years or parts of financial years starting on 1 July 1989 and ending before 1 July 2002 that would have been received at that time; and
 - (b) the notional interest (within the meaning of that subsection) that would have accrued to that time; and
 - (c) the previous payments (within the meaning of that subsection) made before that time.
- (5) In this section:

Comcare-retained funds means so much of the funds from time to time standing to Comcare's credit in a bank account as is attributable to:

- (a) premiums paid to Comcare by Entities and Commonwealth authorities in respect of the financial year starting on 1 July 2002 and subsequent financial years; and
- (b) special premiums paid to Comcare by Entities and Commonwealth authorities in respect of one or more of the financial years starting on 1 July 1999, 1 July 2000 or 1 July 2001; and
- (c) interest earned on the premiums and special premiums referred to in paragraphs (a) and (b); and

- (d) exit contributions paid to Comcare; and
- (e) interest earned on exit contributions paid to Comcare.

90D Appropriation

The Consolidated Revenue Fund is appropriated for the purposes of sections 90B and 90C.

91 Money of Comcare

- (1) There is payable to Comcare such money as is appropriated by the Parliament otherwise than under section 90D of this Act or section 8 of the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005* for the purposes of Comcare.
- (2) The Finance Minister may give directions as to the amounts in which, and the times at which, money referred to in section 90B or 90C or subsection (1) is to be paid to Comcare.
- (3) The money of Comcare must be applied only:
 - (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by Comcare in the performance of its functions and the exercise of its powers under all or any of the following Acts:
 - (i) this Act;
 - (ii) the *Occupational Health and Safety Act 1991*;
 - (iii) the *Work Health and Safety Act 2011*;
 - (iv) the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011*;
 - (v) the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005*;
 - (vi) the *Parliamentary Entitlements Act 1990*; and
 - (b) in payment of remuneration and allowances payable under this Act; and
 - (c) in making any other payments required or permitted to be made by Comcare.

Section 92

- (4) Subsection (3) does not prevent investment, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of Comcare.

92 Estimates of receipts and expenditure

For the purposes of section 36 of the *Public Governance, Performance and Accountability Act 2013* (which deals with budget estimates for Commonwealth entities), the receipts and expenditure of Comcare shall be taken not to include a reference to amounts of compensation paid or payable to, or in accordance with the directions of, Comcare under this Act.

93 Exemption from taxation

Comcare is not subject to taxation under any law of the Commonwealth, of a State or of a Territory.

95 Borrowing

- (1) Comcare may, with the written approval of the Finance Minister, borrow money otherwise than from the Commonwealth on terms and conditions that are specified in, or consistent with, the approval.
- (2) An approval may be in respect of particular borrowings or a specified class or classes of borrowings.
- (3) The Finance Minister may, on behalf of the Commonwealth, guarantee the repayment by Comcare of the amounts borrowed under this section and the payment of interest on such amounts.
- (4) Comcare may give security over the whole or any part of its assets for the repayment of money borrowed by Comcare and the payment of any money that it is otherwise liable to pay in respect of those borrowings, including the payment of any interest on such money.

- (5) Comcare shall not borrow money, except under this section, or otherwise raise money.
- (6) The Finance Minister may, by written instrument, delegate any of the Finance Minister's powers or functions under this section to an official (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of a non-corporate Commonwealth entity (within the meaning of that Act). In exercising powers or functions under a delegation, the official must comply with any directions of the Finance Minister.

Division 4A—Premiums and regulatory contributions

96 Extended meaning of *Commonwealth authority* for purposes of regulatory contributions

For the purposes of section 97D, and the other provisions of this Division as they apply in relation to regulatory contributions under that section, a body that would not otherwise be a Commonwealth authority for the purposes of this Act is taken to be such an authority if it is a public authority for the purposes of the *Work Health and Safety Act 2011*.

96A Available scheme funds

- (1) For the purposes of this Division, *available scheme funds* means the aggregate of:
 - (a) Comcare-retained funds; and
 - (b) so much of the Consolidated Revenue Fund as represents the amount that would be worked out using the formula in subsection 90C(3) if it were assumed that an amount was payable to Comcare under subsection 90C(2).
- (2) If:
 - (a) the application of a provision of this Division requires the calculation of so much of available scheme funds as is attributable to:
 - (i) premiums paid by an Entity, a body corporate or the Australian Capital Territory; or
 - (ii) special premiums paid by an Entity, a body corporate or the Australian Capital Territory; or
 - (iii) interest earned on the premiums and special premiums referred to in subparagraphs (i) and (ii); and
 - (b) Comcare does not have sufficient information to make the calculation;then:

- (c) Comcare may make such assumptions and estimates as Comcare considers reasonable; and
- (d) the calculation may rely on those assumptions and estimates.

96B Comcare-retained funds

For the purposes of this Division, *Comcare-retained funds* has the same meaning as in section 90C.

96C Principal officer

For the purposes of this Division, the *principal officer* of a body corporate (other than a Commonwealth authority or a licensed corporation) is the principal executive officer of the body corporate.

97 Determination of premiums

Comcare must make a determination, in accordance with guidelines issued by the Commission under section 97E, of the amount (if any) of premium to be paid by each Entity and by each Commonwealth authority in respect of the financial year starting on 1 July 2002 and in respect of each later financial year.

97A Matters for consideration in determination of premium

- (1) In determining the amount of the premium payable by an Entity or Commonwealth authority in respect of a financial year under section 97, Comcare must:
 - (a) have regard to:
 - (i) the prescribed amount; and
 - (ii) any penalty amount or bonus amount;in relation to the Entity or authority and that year; and
 - (aa) have regard to the principle that the amount that represents so much of available scheme funds as is attributable to:
 - (i) premiums paid by the Entity or authority; and
 - (ii) special premiums paid by the Entity or authority; and

Section 97A

(iii) interest earned on the premiums and special premiums referred to in subparagraphs (i) and (ii);

should, so far as practicable, be sufficient to meet Comcare's liability (if any) under this Act (including liability under actions for non-economic loss), in respect of injuries suffered:

(iv) in the case of an Entity or an authority that does not hold a licence in force under Part VIII—by employees of the Entity or authority; and

(v) in the case of an authority that holds such a licence—by employees of the authority in respect of whom the authority is not authorised to accept liability; and

(b) comply with any guidelines issued by the Commission under section 97E in relation to the determination of premiums.

(1A) For the purposes of paragraph (1)(aa):

(a) **liability** includes prospective liability; and

(b) assume that Comcare's liability is not contingent on:

(i) the making of a claim for compensation; or

(ii) the giving of a notice under section 53.

(2) In this section:

bonus amount, in relation to an Entity or a Commonwealth authority and a financial year, means the amount (if any) determined by Comcare to be an appropriate amount to be deducted from the prescribed amount in relation to the Entity or authority and that year, having regard to:

(a) the number of claims made by, or in relation to, employees of the Entity or authority in each previous financial year; and

(b) the amount of compensation paid to, or in relation to, such employees under this Act.

penalty amount, in relation to an Entity or Commonwealth authority and a financial year, means the amount if any, determined by Comcare to be an appropriate amount to be added to the prescribed amount in relation to the Entity or authority and that year, having regard to:

- (a) the number of claims made by, or in relation to, employees of the Entity or authority in each previous financial year; and
- (b) the amount of compensation paid to, or in relation to, such employees under this Act.

prescribed amount, in relation to an Entity or Commonwealth authority and a financial year, means the amount worked out in accordance with subsection (3) in relation to that Entity or authority and that year.

- (3) Comcare must work out the prescribed amount, in relation to an Entity or Commonwealth authority and a particular financial year, using the formula:

$$\begin{array}{l} \text{Estimated liability} \\ \text{component} \end{array} + \begin{array}{l} \text{Estimated management} \\ \text{component} \end{array}$$

where:

estimated liability component, in respect of an Entity or a Commonwealth authority and a financial year, means the estimated amount of Comcare's liability (if any) under this Act (including liability under actions for non-economic loss), in that financial year and in subsequent financial years, in respect of the number of injuries that Comcare estimates will be suffered during that financial year:

- (a) in the case of an Entity or of an authority that does not hold a licence in force under Part VIII at the commencement of that financial year—by employees of the Entity or authority; and
- (b) in the case of an authority that holds such a licence at the commencement of that financial year—by employees of the authority in respect of whom the authority is not authorised to accept liability;

being an amount estimated using such methods and having regard to such matters (if any) as the guidelines under section 97E specify.

estimated management component, in respect of an Entity or a Commonwealth authority and a financial year, means the estimated cost (if any) to Comcare, in that financial year and in subsequent financial years, of all claims management (including the cost of

Section 97B

taking over the conduct of actions for non-economic loss) reasonably attributable to the Entity or authority, having regard to the number of injuries that Comcare estimates will be suffered during that financial year:

- (a) in the case of an Entity or of an authority that does not hold a licence under Part VIII at the commencement of that financial year—by employees of the Entity or authority; and
- (b) in the case of an authority that holds such a licence at the commencement of that financial year—by employees of the authority in respect of whom the authority is not authorised to manage claims;

being a cost estimated using such methods and having regard to such matters (if any) as the guidelines under section 97E specify.

97B Determination of special premiums for non-economic loss in respect of injuries suffered after 30 June 1999 and before 1 July 2002

- (1) Comcare must, in respect of each Entity and Commonwealth authority that did not make arrangements for insurance cover in respect of possible liability under actions for non-economic loss in respect of injuries suffered by its employees at any time during:
 - (a) the financial year starting on 1 July 1999; or
 - (b) the financial year starting on 1 July 2000; or
 - (c) the financial year starting on 1 July 2001;determine, within 12 months after the commencement of this section, a special premium to be paid by that Entity or authority in respect of either, or both, of those financial years, as the case requires.
- (2) The Commission may prepare and issue to the Chief Executive Officer written guidelines in relation to the determination of the special premium.
- (3) The Commission must not issue guidelines that are inconsistent with any directions under section 73 of this Act.

- (4) Any guidelines that are inconsistent with a direction of the kind referred to in subsection (3) have no effect to the extent of the inconsistency.
- (5) The provisions of this Division relating to:
- (a) notification of the determination of premium; and
 - (b) the date of effect of a determination of premium and provision for payment of the premium; and
 - (c) procedures for review of the premium by Comcare and the Commission; and
 - (d) provisions for refund or variation of the premium and for repayments of any premium excess;
- apply, subject to such modifications and adaptations (if any) as the regulations provide, in relation to the special premium in similar manner as they apply in relation to a premium paid in respect of the financial year starting on 1 July 2002 as if:
- (e) the special premium were a premium determined under section 97; and
 - (f) the financial year, or each financial year, to which a special premium relates were the financial year starting on that date.
- (6) If a special premium is paid to Comcare:
- (a) it is to be dealt with in the same manner as if it were a premium paid in respect of the financial year starting on 1 July 2002; and
 - (b) it may be applied by Comcare under section 90C to pay, on behalf of an Entity or Commonwealth authority, any damages or costs awarded under, or any amount agreed to be paid in settlement of, an action for non-economic loss.

97C Estimate of premium for certain Commonwealth authorities

When a Commonwealth authority is liable under section 128A to pay an amount in respect of an injury, loss or damage suffered by one of its employees, Comcare, in determining the amount of the premium of the authority for a financial year, must disregard:

- (a) any claim relating to that injury, loss or damage; and

Section 97CA

- (b) any amount paid by the authority under section 128A in respect of that injury, loss or damage.

97CA Determination of exit contributions for former Commonwealth authorities

- (1) If:
- (a) a body corporate ceases to be a Commonwealth authority at a particular time (the *cessation time*); and
 - (b) the body corporate continues in existence; and
 - (c) the amount of Comcare's liability (if any) under this Act (including liability under actions for non-economic loss), in respect of injuries suffered before the cessation time:
 - (i) if the body corporate did not hold a licence in force under Part VIII—by employees of the body corporate; and
 - (ii) if the body corporate held such a licence—by employees of the body corporate in respect of whom the body corporate was not authorised to accept liability; exceeds the amount that represents so much of available scheme funds as is attributable to:
 - (iii) premiums paid by the body corporate before the cessation time; and
 - (iv) special premiums paid by the body corporate before the cessation time; and
 - (v) interest earned on the premiums and special premiums referred to in subparagraphs (iii) and (iv); and
 - (vi) exit contributions paid to Comcare by the body corporate after the cessation time; and
 - (vii) interest earned on exit contributions referred to in subparagraph (vi);

Comcare may make a determination of the amount of the exit contribution to be paid by the body corporate.

- (2) For the purposes of subsection (1), the amount of the exit contribution must be equal to or less than the excess.

- (3) A determination under subsection (1) may only be made during the 7-year period beginning at the cessation time.
- (4) For the purposes of paragraph (1)(c):
 - (a) **liability** includes prospective liability; and
 - (b) assume that Comcare's liability is not contingent on:
 - (i) the making of a claim for compensation; or
 - (ii) the giving of a notice under section 53.
- (5) For the purposes of paragraph (1)(c), if, under subsection 97HA(5), Comcare has permitted an amount of exit contribution payable by the body corporate to be paid in instalments, assume that all of those instalments have been paid to Comcare.

97CB Determination of exit contributions for successors of former Commonwealth authorities

- (1) If:
 - (a) a body corporate (the **first body corporate**) ceases to be a Commonwealth authority at a particular time (the **cessation time**); and
 - (b) the first body corporate ceases to exist at the cessation time; and
 - (c) under a law of the Commonwealth that was in force at the cessation time, another body corporate (the **successor**) becomes the successor in law of the liabilities of the first body corporate; and
 - (d) the amount of Comcare's liability (if any) under this Act (including liability under actions for non-economic loss), in respect of injuries suffered before the cessation time:
 - (i) if the first body corporate did not hold a licence in force under Part VIII—by employees of the first body corporate; and
 - (ii) if the first body corporate held such a licence—by employees of the first body corporate in respect of whom the first body corporate was not authorised to accept liability;

Section 97CB

exceeds the amount that represents so much of available scheme funds as is attributable to:

- (iii) premiums paid by the first body corporate before the cessation time; and
- (iv) special premiums paid by the first body corporate before the cessation time; and
- (v) interest earned on the premiums and special premiums referred to in subparagraphs (iii) and (iv); and
- (vi) exit contributions paid to Comcare by the successor after the cessation time; and
- (vii) interest earned on exit contributions referred to in subparagraph (vi);

Comcare may make a determination of the amount of the exit contribution to be paid by the successor.

- (2) For the purposes of subsection (1), the amount of the exit contribution must be equal to or less than the excess.
- (3) A determination under subsection (1) may only be made during the 7-year period beginning at the cessation time.
- (4) For the purposes of paragraph (1)(c), **liability** means any liability, duty or obligation, whether actual, contingent or prospective.
- (5) For the purposes of paragraph (1)(d):
 - (a) **liability** includes prospective liability; and
 - (b) assume that Comcare's liability is not contingent on:
 - (i) the making of a claim for compensation; or
 - (ii) the giving of a notice under section 53.
- (6) For the purposes of paragraph (1)(d), if, under subsection 97HA(5), Comcare has permitted an amount of exit contribution payable by the successor to be paid in instalments, assume that all of those instalments have been paid to Comcare.

97CC Determination of exit contributions for the Australian Capital Territory if it ceases to be a Commonwealth authority

- (1) If:
- (a) the Australian Capital Territory ceases to be a Commonwealth authority at a particular time (the *cessation time*); and
 - (b) the amount of Comcare's liability (if any) under this Act (including liability under actions for non-economic loss), in respect of injuries suffered before the cessation time by employees of the Australian Capital Territory, exceeds the amount that represents so much of available scheme funds as is attributable to:
 - (i) premiums paid by the Australian Capital Territory before the cessation time; and
 - (ii) special premiums paid by the Australian Capital Territory before the cessation time; and
 - (iii) interest earned on the premiums and special premiums referred to in subparagraphs (i) and (ii); and
 - (iv) exit contributions paid to Comcare by the Australian Capital Territory after the cessation time; and
 - (v) interest earned on exit contributions referred to in subparagraph (iv);
- Comcare may make a determination of the amount of the exit contribution to be paid by the Australian Capital Territory.
- (2) For the purposes of subsection (1), the amount of the exit contribution must be equal to or less than the excess.
- (3) A determination under subsection (1) may only be made during the 7-year period beginning at the cessation time.
- (4) For the purposes of paragraph (1)(b):
- (a) *liability* includes prospective liability; and
 - (b) assume that Comcare's liability is not contingent on:
 - (i) the making of a claim for compensation; or
 - (ii) the giving of a notice under section 53.

Section 97D

- (5) For the purposes of paragraph (1)(b), if, under subsection 97HA(5), Comcare has permitted an amount of exit contribution payable by the Australian Capital Territory to be paid in instalments, assume that all of those instalments have been paid to Comcare.

97D Regulatory contributions payable by an Entity or a Commonwealth authority

- (1) Comcare must make a determination of the amount of the regulatory contribution to be paid by each Entity and by each Commonwealth authority (other than a Commonwealth authority that holds a licence under Part VIII) in respect of the financial year starting on 1 July 2002 and in respect of each later financial year.
- (2) For the purposes of subsection (1), the amount of the regulatory contribution to be paid in respect of a particular financial year:
- (a) by an Entity; or
 - (b) by a Commonwealth authority that does not hold a licence in force under Part VIII at the commencement of that financial year;
- is the sum of:
- (c) that part of the estimated cost incurred by the Commission and Comcare in carrying out their respective functions under this Act (other than excluded functions) that Comcare determines, in accordance with guidelines under section 97E, to be referable to that Entity or authority; and
 - (d) that part of the estimated cost incurred by the Commission and Comcare in carrying out their respective functions under the *Occupational Health and Safety Act 1991*, the *Work Health and Safety Act 2011* and the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011* that Comcare determines, in accordance with those guidelines, to be referable to that Entity or authority.
- (3) For the purposes of subsection (2), ***excluded functions***, in relation to an Entity or Commonwealth authority, means functions of Comcare under this Act the cost of which would count towards the

estimated management component under subsection 97A(3) in relation to the Entity or authority.

97DA Regulatory contributions payable by a former Commonwealth authority etc.

- (1) If:
 - (a) a body corporate ceases to be a Commonwealth authority at a particular time (the *cessation time*); and
 - (b) the body corporate continues in existence;Comcare may make a determination of the amount of the regulatory contribution to be paid by the body corporate:
 - (c) in respect of the financial year in which the cessation time occurred; or
 - (d) in respect of a later financial year.
- (2) If the Australian Capital Territory ceases to be a Commonwealth authority at a particular time (the *cessation time*), Comcare may make a determination of the amount of the regulatory contribution to be paid by the Australian Capital Territory:
 - (a) in respect of the financial year in which the cessation time occurred; or
 - (b) in respect of a later financial year.
- (3) For the purposes of subsections (1) and (2), the amount of the regulatory contribution to be paid in respect of a financial year:
 - (a) by a body corporate; or
 - (b) by the Australian Capital Territory;must not exceed the sum of:
 - (c) that part of the estimated cost incurred by the Commission and Comcare in carrying out their respective functions under this Act after the cessation time that Comcare determines, in accordance with principles under section 97E, to be referable to the body corporate or the Australian Capital Territory; and
 - (d) that part of the estimated cost incurred by the Commission and Comcare in carrying out their respective functions under

Section 97DA

the *Occupational Health and Safety Act 1991*, the *Work Health and Safety Act 2011* and the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011* after the cessation time that Comcare determines, in accordance with those principles, to be referable to the body corporate or the Australian Capital Territory.

- (4) If:
- (a) a body corporate (the **first body corporate**) ceases to be a Commonwealth authority at a particular time (the **cessation time**); and
 - (b) the first body corporate ceases to exist at the cessation time; and
 - (c) under a law of the Commonwealth that was in force at the cessation time, another body corporate (the **successor**) becomes the successor in law of the liabilities of the first body corporate;

Comcare may make a determination of the amount of the regulatory contribution to be paid by the successor:

- (d) in respect of the financial year in which the cessation time occurred; or
 - (e) in respect of a later financial year.
- (5) For the purposes of subsection (4), the amount of the regulatory contribution to be paid in respect of a financial year by the successor must not exceed the sum of:
- (a) that part of the estimated cost incurred by the Commission and Comcare in carrying out their respective functions under this Act after the cessation time that Comcare determines, in accordance with principles under section 97E, to be referable to:
 - (i) the first body corporate; or
 - (ii) the successor in its capacity as successor; and
 - (b) that part of the estimated cost incurred by the Commission and Comcare in carrying out their respective functions under the *Occupational Health and Safety Act 1991*, the *Work Health and Safety Act 2011* and the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011* after

the cessation time that Comcare determines, in accordance with those principles, to be referable to the first body corporate.

- (6) For the purposes of paragraph (4)(c), *liability* means any liability, duty or obligation, whether actual, contingent or prospective.

97DB Constitutional limits

- (1) This Division has no effect to the extent (if any) to which it imposes taxation.
- (2) This Division has no effect to the extent (if any) to which its operation would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) otherwise than on just terms (within the meaning of that paragraph).

97E Guidelines and principles

- (1) The Commission may prepare and issue to the Chief Executive Officer written guidelines in relation to the determination by Comcare of premiums to be paid by Entities and Commonwealth authorities in respect of a financial year.
- (2) The Commission may prepare and issue to the Chief Executive Officer written guidelines in relation to the determination by Comcare of regulatory contributions to be paid by Entities and by Commonwealth authorities (other than Commonwealth authorities that hold a licence under Part VIII) in respect of a financial year.
- (3) The Commission must not issue guidelines that are inconsistent with any directions under section 73 of this Act.
- (4) Any guidelines that are inconsistent with a direction of the kind referred to in subsection (3) have no effect to the extent of the inconsistency.
- (5) The Commission may prepare and issue to the Chief Executive Officer written principles in relation to the determination by

Section 97F

Comcare of regulatory contributions to be paid by bodies corporate and the Australian Capital Territory under section 97DA.

- (6) The Commission must not issue principles that are inconsistent with any directions under section 73 of this Act.
- (7) Any principles that are inconsistent with a direction of the kind referred to in subsection (6) have no effect to the extent of the inconsistency.
- (8) An instrument under subsection (5) is a legislative instrument.

97F Information to be given to Comcare

- (1) The principal officer of each Entity or each Commonwealth authority must give Comcare, not later than the prescribed day in 2003 and in each later year, a written estimate of the amount to be paid to employees of the Entity or authority, as the case may be, by way of salary, wages or pay during the next financial year.
- (2) The principal officer of an Entity or a Commonwealth authority, must, on request by Comcare, give Comcare the information specified in the request, being information needed by Comcare to enable it:
 - (a) to determine a premium under section 97; or
 - (b) to determine a regulatory contribution under section 97D; in relation to the Entity or authority.
- (2A) If:
 - (a) a body corporate ceases to be a Commonwealth authority at a particular time (the *cessation time*); and
 - (b) the body corporate continues in existence;the principal officer of the body corporate must, on request by Comcare, give Comcare the information specified in the request, so long as the information is needed by Comcare to enable it:
 - (c) to determine an exit contribution under section 97CA; or
 - (d) to determine a regulatory contribution under section 97DA; in relation to the body corporate.

- (2B) If:
- (a) a body corporate (the **first body corporate**) ceases to be a Commonwealth authority at a particular time (the **cessation time**); and
 - (b) the first body corporate ceases to exist at the cessation time; and
 - (c) under a law of the Commonwealth that was in force at the cessation time, another body corporate (the **successor**) becomes the successor in law of the liabilities of the first body corporate;
- the principal officer of the successor must, on request by Comcare, give Comcare the information specified in the request, so long as the information is needed by Comcare to enable it:
- (d) to determine an exit contribution under section 97CB; or
 - (e) to determine a regulatory contribution under section 97DA;
- in relation to the successor.
- (2C) If the Australian Capital Territory ceases to be a Commonwealth authority, the principal officer of the Australian Capital Territory must, on request by Comcare, give Comcare the information specified in the request, so long as the information is needed by Comcare to enable it:
- (a) to determine an exit contribution under section 97CC; or
 - (b) to determine a regulatory contribution under section 97DA;
- in relation to the Australian Capital Territory.
- (2D) For the purposes of paragraph (2B)(c), **liability** means any liability, duty or obligation, whether actual, contingent or prospective.
- (3) In this section:
- prescribed day**, in relation to a year, means 30 April in that year, or if the regulations specify another day for the purposes of this definition, the day so specified in that year.

Section 97G

97G Notice of determinations

- (1) Comcare must give a copy of a determination made under section 97 or 97D in relation to an Entity to the principal officer of the Entity.
- (2) Comcare must give a copy of a determination made under section 97 or 97D in relation to a Commonwealth authority to the principal officer of the Commonwealth authority.
- (3) Comcare must give a copy of a determination made under section 97CA, 97CB or 97DA in relation to a body corporate to the principal officer of the body corporate.
- (4) Comcare must give a copy of a determination made under section 97CC or 97DA in relation to the Australian Capital Territory to the principal officer of the Australian Capital Territory.

97H Payment of premium or regulatory contribution by an Entity or Commonwealth authority

- (1) A determination under section 97 or 97D relating to an Entity or Commonwealth authority takes effect 14 days after the day on which the Entity or authority receives a copy of the determination.
- (2) The Commission may give directions, in writing, to the principal officer of an Entity or a Commonwealth authority relating to the payment of the premium or regulatory contribution of the Entity or authority.
- (3) The principal officer of an Entity or an authority must comply with any directions given to him or her by the Commission.
- (4) The Commission may vary a direction given to the principal officer of an Entity or a Commonwealth authority on the written request of the principal officer.

97HA Payment of exit contribution or regulatory contribution by a former Commonwealth authority etc.

- (1) A determination under section 97CA, 97CB, 97CC or 97DA relating to a body corporate or the Australian Capital Territory takes effect 28 days after the day on which the body corporate or the Australian Capital Territory receives a copy of the determination.
- (2) The Commission may give directions, in writing, to the principal officer of the body corporate or the Australian Capital Territory relating to the payment of the exit contribution or regulatory contribution by the body corporate or the Australian Capital Territory.
- (3) The principal officer of the body corporate or the Australian Capital Territory must comply with any directions given to him or her by the Commission.
- (4) The Commission may vary a direction given to the principal officer of the body corporate or the Australian Capital Territory on the written request of the principal officer.
- (5) Comcare may permit an amount of exit contribution payable by a body corporate or the Australian Capital Territory under section 97CA, 97CB or 97CC to be paid in instalments, so long as the last instalment is payable within 7 years after the day on which the determination of the exit contribution is made.

97J Review by Comcare of determination of premium or regulatory contribution

- (1) The principal officer of the Entity or the Commonwealth authority, to which a determination under section 97 or 97D relates may, by written notice of objection, ask Comcare to review the determination. The notice must be given to Comcare within 14 days after the day on which the Entity or authority received a copy of the determination.

Section 97J

- (1A) If a determination under section 97CA, 97CB, 97CC or 97DA relates to a body corporate or the Australian Capital Territory, the principal officer of the body corporate or the Australian Capital Territory may, by written notice of objection, ask Comcare to review the determination. The notice must be given to Comcare within 14 days after the day on which the body corporate or the Australian Capital Territory received a copy of the determination.
- (2) A notice under subsection (1) or (1A) must set out the grounds of the objection.
- (3) As soon as practicable after receiving the notice, Comcare must review the determination and must decide either:
 - (a) to confirm the determination; or
 - (b) to vary the determination in such manner as it thinks fit and confirm the determination as so varied.
- (4) If notice of objection is given under subsection (1), Comcare must give a written notice to the principal officer of the Entity or the Commonwealth authority of the result of the review of the determination.
- (5) If the principal officer of an Entity or a Commonwealth authority gives notice of objection to a determination of the premium or regulatory contribution payable by the Entity or authority under subsection (1), the Entity or the authority is still obliged to pay the premium or regulatory contribution in accordance with any directions given under section 97H.
- (6) If notice of objection is given under subsection (1A), Comcare must give a written notice to the principal officer of the body corporate or the Australian Capital Territory of the result of the review of the determination.
- (7) If the principal officer of a body corporate or the Australian Capital Territory gives notice of objection to a determination of the exit contribution or regulatory contribution payable by the body corporate or the Australian Capital Territory under subsection (1A), the body corporate or the Australian Capital Territory is still obliged to pay the exit contribution or regulatory

contribution in accordance with any directions given under section 97HA.

97K Further review by Commission of outcome of Comcare's review

- (1) If:
- (a) a determination under section 97 or 97D in relation to an Entity or a Commonwealth authority has been reviewed by Comcare under section 97J; and
 - (b) the principal officer of the Entity or authority, objects to the determination (or to the determination as varied as a result of the review);

the principal officer may, by written notice of objection given to the Commission within 14 days after the date of the notice mentioned in subsection 97J(4), ask the Commission to review the determination, or the determination as so varied, as the case may be.

- (1A) If:
- (a) a determination under section 97CA, 97CB, 97CC or 97DA in relation to a body corporate or the Australian Capital Territory has been reviewed by Comcare under section 97J; and
 - (b) the principal officer of the body corporate or the Australian Capital Territory objects to the determination (or the determination as varied as a result of the review);

the principal officer may, by written notice of objection given to the Commission within 14 days after the date of the notice mentioned in subsection 97J(6), ask the Commission to review the determination, or the determination as so varied, as the case may be.

- (2) A notice under subsection (1) or (1A) must set out the grounds of the objection.
- (3) As soon as practicable after receiving the notice, the Commission must review the determination, or the determination as so varied,

Section 97L

and must decide either:

- (a) to confirm the determination; or
 - (b) to vary the determination in such manner as it thinks fit and confirm the determination as so varied.
- (4) The Commission must give written notice of the result of the review to the principal officer of the Entity, the Commonwealth authority, the body corporate or the Australian Capital Territory.

97L Refund of premium or regulatory contribution paid by an Entity or Commonwealth authority

- (1) If:
- (a) an amount equal to the premium, or regulatory contribution, of an Entity or Commonwealth authority for a financial year has been paid to Comcare in accordance with a direction of the Commission; and
 - (b) the amount of the premium or regulatory contribution is later reduced as a result of a review under section 97J or 97K;
- the Entity or authority is entitled to the difference between the amount so paid and the reduced amount.
- (2) The difference must be repaid by Comcare to the Entity or authority concerned.
- (3) Interest is payable on the difference, at such rate as is from time to time specified by the Minister by notice in the *Gazette*, in respect of each day of the overpayment period. However, interest is not payable under this section if it is less than \$100.
- (4) In this section:
- overpayment period*** means the period beginning on the day on which an Entity's or authority's premium or regulatory contribution in respect of a financial year was paid under section 97H and ending on the day on which the amount of the difference under subsection (1) was repaid under subsection (2).

97LA Refund of exit contribution or regulatory contribution paid by a former Commonwealth authority etc.

- (1) If:
- (a) an amount equal to the exit contribution, or section 97DA regulatory contribution, of a body corporate or the Australian Capital Territory has been paid to Comcare in accordance with a direction of the Commission; and
 - (b) the amount of the exit contribution or regulatory contribution is later reduced as a result of a review under section 97J or 97K;
- the body corporate or the Australian Capital Territory is entitled to the difference between the amount so paid and the reduced amount.
- (2) The difference must be repaid by Comcare to the body corporate or the Australian Capital Territory.
- (3) Interest is payable on the difference, at such rate as is from time to time specified in a notice under subsection 97L(3), in respect of each day of the overpayment period. However, interest is not payable under this section if it is less than \$100.
- (4) In this section:
- overpayment period* means the period:
- (a) beginning on the day on which a body corporate's or the Australian Capital Territory's exit contribution or regulatory contribution was paid under section 97HA; and
 - (b) ending on the day on which the amount of the difference under subsection (1) was repaid under subsection (2).

97M Variation of determination of premium or regulatory contribution payable by an Entity or Commonwealth authority

- (1) Comcare may, in writing, vary a determination of the amount of an Entity's or Commonwealth authority's premium or regulatory contribution if, and only if:

Section 97M

- (a) there is an error in information given to Comcare under section 97F that affected the determination; or
 - (b) Comcare has made an error in determining the amount of the premium or contribution; or
 - (c) there is a significant change in the number of persons employed by the Entity or authority during the financial year to which the determination relates; or
 - (d) there is a significant change in the estimated amount of salary, wages or pay payable to those persons during that year; or
 - (e) in the case of a Commonwealth authority:
 - (i) a licence is, or is to be, granted to the authority; or
 - (ii) a licence held by the authority is, or is to be, revoked.
- (2) Comcare must send a copy of the variation, together with a statement of the reasons for the variation, to the principal officer of the Entity or the Commonwealth authority.
- (3) Sections 97J and 97K apply to a variation of a determination in the same way they apply to a determination.
- (4) If:
- (a) an amount equal to the premium or regulatory contribution of an Entity or Commonwealth authority in respect of a financial year has been paid to Comcare in accordance with a direction of the Commission; and
 - (b) the amount of the premium or regulatory contribution is later reduced as a result of a variation under this section;
- the Entity or authority is entitled to the difference between the amount so paid and the reduced amount.
- (5) The difference must be repaid by Comcare to the Entity or authority concerned.
- (6) If Comcare erroneously charges an Entity or Commonwealth authority a premium or regulatory contribution in excess of the premium or contribution that it should have charged, Comcare must, in addition to repaying the amount of the excess, also pay the Entity or authority interest on the excess.
-

- (7) Interest on the excess is payable at such rate as is from time to time specified by the Minister by notice in the *Gazette*, in respect of each day after the overpayment and before the excess is repaid. However, interest is not payable on the excess if it is less than \$100.

97MA Variation of determination of exit contribution or regulatory contribution payable by a former Commonwealth authority etc.

- (1) Comcare may, in writing, vary a determination under section 97CA, 97CB, 97CC or 97DA of the amount of a body corporate's or the Australian Capital Territory's exit contribution or regulatory contribution if, and only if:
- (a) there is an error in information given to Comcare under section 97F that affected the determination; or
 - (b) Comcare has made an error in determining the amount of the exit contribution or contribution.
- (2) Comcare must send a copy of the variation, together with a statement of the reasons for the variation, to the principal officer of the body corporate or the Australian Capital Territory.
- (3) Sections 97J and 97K apply to a variation of a determination in the same way they apply to a determination.
- (4) If:
- (a) an amount equal to the exit contribution or regulatory contribution of a body corporate or the Australian Capital Territory has been paid to Comcare in accordance with a direction of the Commission; and
 - (b) the amount of the exit contribution or regulatory contribution is later reduced as a result of a variation under this section;
- the body corporate or the Australian Capital Territory is entitled to the difference between the amount so paid and the reduced amount.
- (5) The difference must be repaid by Comcare to the body corporate or the Australian Capital Territory.

Section 97N

- (6) If Comcare erroneously charges a body corporate or the Australian Capital Territory an exit contribution or regulatory contribution in excess of the maximum exit contribution or maximum regulatory contribution that it could have charged, Comcare must, in addition to repaying the amount of the excess, also pay the body corporate or the Australian Capital Territory interest on the excess.
- (7) Interest on the excess is payable at such rate as is from time to time specified in a notice under subsection 97M(7), in respect of each day after the overpayment and before the excess is repaid. However, interest is not payable on the excess if it is less than \$100.

97N Repayment of premium excess etc.

- (1) Comcare must make the payments required under section 97L, 97LA, 97M or 97MA from Comcare-retained funds.
- (2) If there is insufficient money in Comcare-retained funds to make a particular payment under subsection (1) there is payable to Comcare, out of the Consolidated Revenue Fund, which is appropriated accordingly, such an amount as is necessary to enable Comcare to make that payment.

97P Late payment penalty

- (1) If an amount of premium or regulatory contribution payable by an Entity or Commonwealth authority is not paid by the Entity or authority:
 - (a) by 31 July in the financial year to which the premium or regulatory contribution relates; or
 - (b) within 30 days after the day on which notice of the determination of the premium or regulatory contribution is issued;whichever is the later, interest is payable, by way of penalty, on the amount, at such rate as is from time to time specified by the Minister by legislative instrument, in respect of each day on which the amount is not so paid. However, interest is not payable under this subsection if it is less than \$100.

- (2) If:
- (a) an amount of exit contribution or regulatory contribution is payable by a body corporate or the Australian Capital Territory under section 97CA, 97CB, 97CC or 97DA; and
 - (b) the amount is not paid by the body corporate or the Australian Capital Territory within 28 days after the day on which notice of the determination of the exit contribution or regulatory contribution is issued;
- interest is payable, by way of penalty, on the amount, at such rate as is from time to time specified by the Minister by legislative instrument, in respect of each day on which the amount is not so paid. However, interest is not payable under this subsection if it is less than \$100.
- (3) Subsection (2) does not apply to an amount of exit contribution if Comcare has, under subsection 97HA(5), permitted the amount to be paid in instalments.
- (4) If:
- (a) an amount of exit contribution is payable by a body corporate or the Australian Capital Territory under section 97CA, 97CB or 97CC; and
 - (b) Comcare has, under subsection 97HA(5), permitted the amount to be paid in instalments; and
 - (c) the amount of the last instalment is not paid by the body corporate or the Australian Capital Territory within 28 days after the day on which the last instalment becomes payable;
- interest is payable, by way of penalty, on the amount of the last instalment, at such rate as is from time to time specified by the Minister by legislative instrument, in respect of each day on which the amount of the last instalment is not so paid. However, interest is not payable under this subsection if it is less than \$100.

Section 97Q

97Q Refund of premiums to former Commonwealth authorities

- (1) If:
- (a) a body corporate ceases to be a Commonwealth authority at a particular time (the *cessation time*); and
 - (b) the body corporate continues in existence; and
 - (c) the amount that represents so much of available scheme funds as is attributable to:
 - (i) premiums paid by the body corporate before the cessation time; and
 - (ii) special premiums paid by the body corporate before the cessation time; and
 - (iii) interest earned on the premiums and special premiums referred to in subparagraphs (i) and (ii);exceeds Comcare's liability (if any) under this Act (including liability under actions for non-economic loss), in respect of injuries suffered before the cessation time:
 - (iv) if the body corporate did not hold a licence in force under Part VIII—by employees of the body corporate; and
 - (v) if the body corporate held such a licence—by employees of the body corporate in respect of whom the body corporate was not authorised to accept liability;Comcare may make a determination that an amount equal to the excess is payable to the body corporate by way of a refund of premiums paid to Comcare by the body corporate.
- (2) The amount is to be paid by Comcare within 28 days after the determination is made.
- (2A) A determination under subsection (1) may only be made during the 7-year period beginning at the cessation time.
- (3) For the purposes of paragraph (1)(c):
- (a) *liability* includes prospective liability; and
 - (b) assume that Comcare's liability is not contingent on:
 - (i) the making of a claim for compensation; or

- (ii) the giving of a notice under section 53.

97QA Refund of premiums to successors of former Commonwealth authorities

(1) If:

- (a) a body corporate (the *first body corporate*) ceases to be a Commonwealth authority at a particular time (the *cessation time*); and
- (b) the first body corporate ceases to exist at the cessation time; and
- (c) under a law of the Commonwealth that was in force at the cessation time, another body corporate (the *successor*) becomes the successor in law of the liabilities of the first body corporate; and
- (d) the amount that represents so much of available scheme funds as is attributable to:
 - (i) premiums paid by the first body corporate before the cessation time; and
 - (ii) special premiums paid by the first body corporate before the cessation time; and
 - (iii) interest earned on the premiums and special premiums referred to in subparagraphs (i) and (ii);
exceeds Comcare's liability (if any) under this Act (including liability under actions for non-economic loss), in respect of injuries suffered before the cessation time;
 - (iv) if the first body corporate did not hold a licence in force under Part VIII—by employees of the first body corporate; and
 - (v) if the first body corporate held such a licence—by employees of the first body corporate in respect of whom the first body corporate was not authorised to accept liability;

Comcare may make a determination that an amount equal to the excess is payable to the successor by way of a refund of premiums paid to Comcare by the first body corporate.

Section 97QB

- (2) The amount is to be paid by Comcare within 28 days after the determination is made.
- (2A) A determination under subsection (1) may only be made during the 7-year period beginning at the cessation time.
- (3) For the purposes of paragraph (1)(c), **liability** means any liability, duty or obligation, whether actual, contingent or prospective.
- (4) For the purposes of paragraph (1)(d):
 - (a) **liability** includes prospective liability; and
 - (b) assume that Comcare's liability is not contingent on:
 - (i) the making of a claim for compensation; or
 - (ii) the giving of a notice under section 53.

97QB Refund of premiums to the Australian Capital Territory if it ceases to be a Commonwealth authority

- (1) If:
 - (a) the Australian Capital Territory ceases to be a Commonwealth authority at a particular time (the **cessation time**); and
 - (b) the amount that represents so much of available scheme funds as is attributable to:
 - (i) premiums paid by the Australian Capital Territory before the cessation time; and
 - (ii) special premiums paid by the Australian Capital Territory before the cessation time; and
 - (iii) interest earned on the premiums and special premiums referred to in subparagraphs (i) and (ii);exceeds Comcare's liability (if any) under this Act (including liability under actions for non-economic loss), in respect of injuries suffered before the cessation time by employees of the Australian Capital Territory;

Comcare may make a determination that an amount equal to the excess is payable to the Australian Capital Territory by way of a refund of premiums paid to Comcare by the Australian Capital Territory.

- (2) The amount is to be paid by Comcare within 28 days after the determination is made.
- (2A) A determination under subsection (1) may only be made during the 7-year period beginning at the cessation time.
- (3) For the purposes of paragraph (1)(b):
 - (a) **liability** includes prospective liability; and
 - (b) assume that Comcare's liability is not contingent on:
 - (i) the making of a claim for compensation; or
 - (ii) the giving of a notice under section 53.

97QBA Refund of exit contributions to former Commonwealth authorities

- (1) If:
 - (a) a body corporate ceases to be a Commonwealth authority at a particular time (the **cessation time**); and
 - (b) the body corporate continues in existence; and
 - (c) the amount that represents so much of available scheme funds as is attributable to:
 - (i) premiums paid by the body corporate before the cessation time; and
 - (ii) special premiums paid by the body corporate before the cessation time; and
 - (iii) interest earned on the premiums and special premiums referred to in subparagraphs (i) and (ii); and
 - (iv) exit contributions, or instalments of exit contributions, paid to Comcare by the body corporate after the cessation time; and
 - (v) interest earned on exit contributions and instalments referred to in subparagraph (iv);
- exceeds Comcare's liability (if any) under this Act (including liability under actions for non-economic loss), in respect of injuries suffered before the cessation time:

Section 97QBB

- (vi) if the body corporate did not hold a licence in force under Part VIII—by employees of the body corporate; and
 - (vii) if the body corporate held such a licence—by employees of the body corporate in respect of whom the body corporate was not authorised to accept liability;
- Comcare may make a determination that a specified amount is payable to the body corporate by way of a refund of the whole or a part of the exit contributions, or instalments of exit contributions, paid to Comcare by the body corporate.
- (2) For the purposes of subsection (1), the specified amount must be equal to or less than the excess.
 - (3) The specified amount is to be paid by Comcare within 28 days after the determination is made.
 - (4) A determination under subsection (1) may only be made during the 7-year period beginning at the cessation time.
 - (5) For the purposes of paragraph (1)(c):
 - (a) **liability** includes prospective liability; and
 - (b) assume that Comcare's liability is not contingent on:
 - (i) the making of a claim for compensation; or
 - (ii) the giving of a notice under section 53.
 - (6) Comcare may defer making a determination under subsection (1) of this section in relation to the body corporate until Comcare has made a payment to the body corporate under section 97Q.

97QBB Refund of exit contributions to successors of former Commonwealth authorities

- (1) If:
 - (a) a body corporate (the **first body corporate**) ceases to be a Commonwealth authority at a particular time (the **cessation time**); and
 - (b) the first body corporate ceases to exist at the cessation time; and

Section 97QBB

- (c) under a law of the Commonwealth that was in force at the cessation time, another body corporate (the *successor*) becomes the successor in law of the liabilities of the first body corporate; and
- (d) the amount that represents so much of available scheme funds as is attributable to:
 - (i) premiums paid by the first body corporate before the cessation time; and
 - (ii) special premiums paid by the first body corporate before the cessation time; and
 - (iii) interest earned on the premiums and special premiums referred to in subparagraphs (i) and (ii); and
 - (iv) exit contributions, or instalments of exit contributions, paid to Comcare by the successor after the cessation time; and
 - (v) interest earned on exit contributions and instalments referred to in subparagraph (iv);exceeds Comcare's liability (if any) under this Act (including liability under actions for non-economic loss), in respect of injuries suffered before the cessation time:
 - (vi) if the first body corporate did not hold a licence in force under Part VIII—by employees of the first body corporate; and
 - (vii) if the first body corporate held such a licence—by employees of the first body corporate in respect of whom the first body corporate was not authorised to accept liability;

Comcare may make a determination that a specified amount is payable to the successor by way of a refund of the whole or a part of the exit contributions, or instalments of exit contributions, paid to Comcare by the successor.

- (2) For the purposes of subsection (1), the specified amount must be equal to or less than the excess.
- (3) The specified amount is to be paid by Comcare within 28 days after the determination is made.

Section 97QBC

- (4) A determination under subsection (1) may only be made during the 7-year period beginning at the cessation time.
- (5) For the purposes of paragraph (1)(c), **liability** means any liability, duty or obligation, whether actual, contingent or prospective.
- (6) For the purposes of paragraph (1)(d):
 - (a) **liability** includes prospective liability; and
 - (b) assume that Comcare's liability is not contingent on:
 - (i) the making of a claim for compensation; or
 - (ii) the giving of a notice under section 53.
- (7) Comcare may defer making a determination under subsection (1) of this section in relation to the successor until Comcare has made a payment to the successor under section 97QA.

97QBC Refund of exit contributions to the Australian Capital Territory if it ceases to be a Commonwealth authority

- (1) If:
 - (a) the Australian Capital Territory ceases to be a Commonwealth authority at a particular time (the **cessation time**); and
 - (b) the amount that represents so much of available scheme funds as is attributable to:
 - (i) premiums paid by the Australian Capital Territory before the cessation time; and
 - (ii) special premiums paid by the Australian Capital Territory before the cessation time; and
 - (iii) interest earned on the premiums and special premiums referred to in subparagraphs (i) and (ii); and
 - (iv) exit contributions, or instalments of exit contributions, paid to Comcare by the Australian Capital Territory after the cessation time; and
 - (v) interest earned on exit contributions and instalments referred to in subparagraph (iv);

exceeds Comcare's liability (if any) under this Act (including liability under actions for non-economic loss), in respect of injuries suffered before the cessation time by employees of the Australian Capital Territory;

Comcare may make a determination that a specified amount is payable to the Australian Capital Territory by way of a refund of the whole or a part of the exit contributions, or instalments of exit contributions, paid to Comcare by the Australian Capital Territory.

- (2) For the purposes of subsection (1), the specified amount must be equal to or less than the excess.
- (3) The specified amount is to be paid by Comcare within 28 days after the determination is made.
- (4) A determination under subsection (1) may only be made during the 7-year period beginning at the cessation time.
- (5) For the purposes of paragraph (1)(b):
 - (a) **liability** includes prospective liability; and
 - (b) assume that Comcare's liability is not contingent on:
 - (i) the making of a claim for compensation; or
 - (ii) the giving of a notice under section 53.
- (6) Comcare may defer making a determination under subsection (1) of this section until Comcare has made a payment under section 97QB.

97QC Refunds to be made from Comcare-retained funds

- (1) Comcare must make a payment under section 97Q, 97QA, 97QB, 97QBA, 97QBB or 97QBC from Comcare-retained funds.
- (2) If there is insufficient money in Comcare-retained funds to make a particular payment mentioned in subsection (1), there is payable to Comcare, out of the Consolidated Revenue Fund, which is appropriated accordingly, such an amount as is necessary to enable Comcare to make that payment.

Section 97QD

**97QD Remission of exit contributions payable by former
Commonwealth authorities**

- (1) If:
- (a) a body corporate ceases to be a Commonwealth authority at a particular time (the *cessation time*); and
 - (b) the body corporate continues in existence; and
 - (c) under subsection 97HA(5), Comcare has permitted an amount of exit contribution payable by the body corporate to be paid in instalments; and
 - (d) one or more of those instalments have not been paid; and
 - (e) the amount that represents so much of available scheme funds as is attributable to:
 - (i) premiums paid by the body corporate before the cessation time; and
 - (ii) special premiums paid by the body corporate before the cessation time; and
 - (iii) interest earned on the premiums and special premiums referred to in subparagraphs (i) and (ii); and
 - (iv) instalments of exit contribution paid to Comcare by the body corporate after the cessation time; and
 - (v) interest earned on instalments referred to in subparagraph (iv);exceeds Comcare's liability (if any) under this Act (including liability under actions for non-economic loss), in respect of injuries suffered before the cessation time:
 - (vi) if the body corporate did not hold a licence in force under Part VIII—by employees of the body corporate; and
 - (vii) if the body corporate held such a licence—by employees of the body corporate in respect of whom the body corporate was not authorised to accept liability;Comcare may remit the whole or a part of the amount of any or all of the unpaid instalments.
- (2) For the purposes of subsection (1), the total amount remitted must be equal to or less than the excess.

- (3) For the purposes of paragraph (1)(e):
- (a) **liability** includes prospective liability; and
 - (b) assume that Comcare's liability is not contingent on:
 - (i) the making of a claim for compensation; or
 - (ii) the giving of a notice under section 53.
- (4) For the purposes of paragraph (1)(e), assume that all instalments of exit contributions payable by the body corporate have been paid to Comcare.

97QE Remission of exit contributions payable by successors of former Commonwealth authorities

- (1) If:
- (a) a body corporate (the **first body corporate**) ceases to be a Commonwealth authority at a particular time (the **cessation time**); and
 - (b) the first body corporate ceases to exist at the cessation time; and
 - (c) under a law of the Commonwealth that was in force at the cessation time, another body corporate (the **successor**) becomes the successor in law of the liabilities of the first body corporate; and
 - (d) under subsection 97HA(5), Comcare has permitted an amount of exit contribution payable by the successor to be paid in instalments; and
 - (e) one or more of those instalments have not been paid; and
 - (f) the amount that represents so much of available scheme funds as is attributable to:
 - (i) premiums paid by the first body corporate before the cessation time; and
 - (ii) special premiums paid by the first body corporate before the cessation time; and
 - (iii) interest earned on the premiums and special premiums referred to in subparagraphs (i) and (ii); and
 - (iv) instalments of exit contribution paid to Comcare by the successor after the cessation time; and

Section 97QF

- (v) interest earned on instalments referred to in subparagraph (iv);
exceeds Comcare's liability (if any) under this Act (including liability under actions for non-economic loss), in respect of injuries suffered before the cessation time:
 - (vi) if the first body corporate did not hold a licence in force under Part VIII—by employees of the first body corporate; and
 - (vii) if the first body corporate held such a licence—by employees of the first body corporate in respect of whom the first body corporate was not authorised to accept liability;
- Comcare may remit the whole or a part of the amount of any or all of the unpaid instalments.
- (2) For the purposes of subsection (1), the total amount remitted must be equal to or less than the excess.
 - (3) For the purposes of paragraph (1)(c), **liability** means any liability, duty or obligation, whether actual, contingent or prospective.
 - (4) For the purposes of paragraph (1)(f):
 - (a) **liability** includes prospective liability; and
 - (b) assume that Comcare's liability is not contingent on:
 - (i) the making of a claim for compensation; or
 - (ii) the giving of a notice under section 53.
 - (5) For the purposes of paragraph (1)(f), assume that all instalments of exit contributions payable by the successor have been paid to Comcare.

97QF Remission of exit contributions payable by the Australian Capital Territory if it ceases to be a Commonwealth authority

- (1) If:
 - (a) the Australian Capital Territory ceases to be a Commonwealth authority at a particular time (the **cessation**

time); and

- (b) under subsection 97HA(5), Comcare has permitted an amount of exit contribution payable by the Australian Capital Territory to be paid in instalments; and
- (c) one or more of those instalments have not been paid; and
- (d) the amount that represents so much of available scheme funds as is attributable to:
 - (i) premiums paid by the Australian Capital Territory before the cessation time; and
 - (ii) special premiums paid by the Australian Capital Territory before the cessation time; and
 - (iii) interest earned on the premiums and special premiums referred to in subparagraphs (i) and (ii); and
 - (iv) instalments of exit contribution paid to Comcare by the Australian Capital Territory after the cessation time; and
 - (v) interest earned on instalments referred to in subparagraph (iv);exceeds Comcare's liability (if any) under this Act (including liability under actions for non-economic loss), in respect of injuries suffered before the cessation time by employees of the Australian Capital Territory;

Comcare may remit the whole or a part of the amount of any or all of the unpaid instalments.

- (2) For the purposes of subsection (1), the total amount remitted must be equal to or less than the excess.
- (3) For the purposes of paragraph (1)(d):
 - (a) **liability** includes prospective liability; and
 - (b) assume that Comcare's liability is not contingent on:
 - (i) the making of a claim for compensation; or
 - (ii) the giving of a notice under section 53.
- (4) For the purposes of paragraph (1)(d), assume that all instalments of exit contributions payable by the Australian Capital Territory have been paid to Comcare.

Part VIII Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

Division 1 Preliminary

Section 98A

Part VIII—Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

Division 1—Preliminary

98A Outline of Part

- (1) This Part enables the Commission to grant licences to Commonwealth authorities or eligible corporations.
- (2) If a licence is granted to a Commonwealth authority, this Act continues to apply in relation to employees of the authority but, depending on the scope of the licence, the application of this Act is subject to either or both of the following:
 - (a) the acceptance by the authority of the whole or a part of the liability under this Act for payments in respect of injury, loss or damage suffered by, or the death of, some or all of its employees;
 - (b) the acceptance by the authority of the responsibility for managing certain claims under this Act in respect of injury, loss or damage suffered by, or the death of, some or all of its employees.
- (3) If a licence is granted to an eligible corporation, this Act applies in relation to some or all of the employees of the corporation in a similar way to the way in which it applies to employees of the Commonwealth but the application is subject to:
 - (a) the acceptance by the corporation of the whole or a part of the liability under this Act for payments in respect of injury, loss or damage suffered by, or the death of, those employees; and
 - (b) the acceptance by the corporation of the function of managing claims under this Act in respect of that injury, loss, damage or death.

- (4) If a licence is granted to a Commonwealth authority or to a corporation, the application of this Act is also subject to the conditions to which the licence is subject.

99 Definitions

In this Part:

claim includes a request.

determination includes a decision or requirement.

eligible corporation means a corporation that is declared by the Minister to be an eligible corporation under section 100.

eligible applicant means a Commonwealth authority or an eligible corporation.

manage, in relation to a claim for payment of compensation or other amounts under this Act, includes determination of the claim, reconsideration of the determination, and any subsequent administrative action in relation to the claim as so determined.

variation, in relation to the conditions to which a licence is subject, includes the addition of a new condition, an alteration to an existing condition or the omission of an existing condition.

100 Minister may declare a corporation eligible to be granted a licence under this Part

- (1) If the Minister is satisfied that it would be desirable for this Act to apply to employees of a corporation that:
- (a) is, but is about to cease to be, a Commonwealth authority; or
 - (b) was previously a Commonwealth authority; or
 - (c) is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority;
- the Minister may, by legislative instrument, declare the corporation to be eligible to be granted a licence under this Part.

Part VIII Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

Division 1 Preliminary

Section 101

- (2) However, the Minister is not required to consider a request for a declaration under subsection (1).

101 Ministerial directions concerning licences

- (1) The Minister's power to give directions to the Commission under section 89D extends to directions concerning any matter relating to the grant of licences under this Part. Without limiting the matters the directions may deal with, the Minister may give directions concerning:
- (a) criteria and procedures for the grant of such licences; or
 - (b) the scope of licences and the conditions to which licences having a particular scope may be expressed to be subject; or
 - (c) the exercise by the Commission of the power to vary the conditions to which such licences are subject; or
 - (d) criteria and procedures for the extension, suspension or revocation of such licences or for varying the scope of such licences; or
 - (e) publication of notices about any grant, extension, suspension or revocation of such licences or for varying the scope of such licences or the conditions to which they are subject; or
 - (f) requirements to be observed by the Commission in relation to the keeping of records, and the periodic reporting of particulars, in relation to such licences.

Note: Criteria for the grant of a licence may address issues relating not only to the licence applied for but also to other licences that have been granted or that are being sought.

- (2) Directions given by the Minister to the Commission under section 89D concerning licences are legislative instruments to which section 42 (disallowance) of the *Legislation Act 2003* applies.

Division 2—Powers of the Commission in relation to licences

102 Application for grant of a licence

- (1) An application by an eligible applicant for the grant of a licence must:
 - (a) be in writing in the prescribed form; and
 - (b) contain such particulars of the eligible applicant as the regulations prescribe; and
 - (c) having regard to the scope of the licence sought—contain such other information, and be accompanied by such documents, as the regulations provide; and
 - (d) be lodged with the Commission.
- (2) The eligible applicant is liable to pay to Comcare in respect of the application an application fee equal to the amount estimated by the Commission to be the cost of considering the application.
- (3) The Commission is to give written notice to the eligible applicant of the amount of the application fee and:
 - (a) if the notice is given before the application is made—the application fee is to accompany the application; or
 - (b) otherwise—the application fee is to be paid as soon as practicable after the notice is given.
- (4) An eligible applicant may withdraw an application at any time before a decision is made on the application.
- (5) If the application is withdrawn after receipt by Comcare of the application fee, the Commission may, depending upon the extent to which it has already considered the application:
 - (a) request Comcare to refund the application fee entirely; or
 - (b) reduce the application fee by such amount as it considers reasonable having regard to the extent of that consideration and request Comcare to refund the amount of the reduction.

Part VIII Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

Division 2 Powers of the Commission in relation to licences

Section 103

- (6) For the purpose of subsection (5), the reference to the extent of the Commission's consideration of an application includes a reference to any act or thing done by Comcare to assist the Commission in that consideration.

103 The Commission's power to grant licences

- (1) The Commission may, on application made in accordance with section 102, grant the eligible applicant a licence for a specified period.
- (2) If the Commission grants a licence to an eligible applicant, the Commission must determine:
 - (a) in accordance with Division 3—the scope of the licence so far as concerns the degree to which, and the circumstances in which, the licensee may accept liability for compensation; and
 - (b) in accordance with Division 4—the scope of the licence so far as concerns the degree to which, and the circumstances in which, the licensee is authorised to manage claims; and
 - (c) in accordance with Division 5—the conditions (if any) to which the grant of the licence is subject.

104 Licence decision

- (1) If the Commission considers, having regard to:
 - (a) the information contained in an application received by it; and
 - (b) any further information that is provided to the Commission by the applicant for the purpose of enabling consideration of the application; and
 - (c) any other matter that the Commission considers relevant;that it is appropriate to do so, the Commission may grant the licence sought. On granting the licence, the Commission must, by written notice given to the applicant, inform the applicant of its decision.

- (2) In order for the Commission to be satisfied, for the purposes of subsection (1), that it is appropriate to grant an applicant the licence sought, the Commission must be satisfied that:
- (a) the applicant has sufficient resources to fulfil the responsibilities imposed on it under the licence; and
 - (b) the applicant has the capacity to ensure (where the scope of the licence so provides) that claims that are to be managed either by the licensee, or by another person identified in the licence on the licensee's behalf, will be managed in accordance with standards set by the Commission for the management of claims; and
 - (c) the grant of the licence will not be contrary to the interests of the employees of the licensee whose affairs fall within the scope of the licence; and
 - (d) the applicant has the capacity to meet the standards set by the Commission for the rehabilitation and occupational health and safety of its employees.
- (2A) The Commission must not grant a licence to the applicant if:
- (a) because of the past conduct of the applicant, including the applicant's performance in complying with the law of the Commonwealth or of a State or Territory dealing with occupational health and safety, the Commission is satisfied that it is unlikely that the applicant will, if licensed, meet the standards set by the Commission for the occupational health and safety of the applicant's employees; or
 - (b) because of the past conduct of the applicant, including the applicant's performance in meeting obligations in relation to rehabilitation under the law of the Commonwealth or of a State or Territory, the Commission is satisfied that it is unlikely that the applicant will, if licensed, meet the standards set by the Commission for the rehabilitation of the applicant's employees; or
 - (c) because of the past conduct of the applicant, including the applicant's performance in meeting obligations in relation to claims management under the law of the Commonwealth or of a State or Territory, the Commission is satisfied that it is

Part VIII Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

Division 2 Powers of the Commission in relation to licences

Section 104A

unlikely that the applicant will, if licensed, manage claims in accordance with the standards set by the Commission.

- (3) If the Commission does not consider it appropriate to grant the applicant the licence sought, it must, by written notice given to the applicant, inform the applicant that it has decided to refuse the application and provide reasons for its decision.
- (4) Nothing in subsection (3) prevents the Commission, with the written agreement of the applicant, granting the applicant a licence having a different scope to the licence sought by the applicant.

104A Licence fees

- (1) At the date of commencement of a licence, and at each 1 July after that date, while the licence is in force, the licensee becomes liable to pay a licence fee in respect of the holding or continued holding of the licence.
- (2) The amount of the licence fee is the amount notified in writing to the licensee by the Commission, being the amount estimated by the Commission to represent:
 - (a) that part of the cost incurred by the Commission and by Comcare in carrying out their respective functions under this Act (other than the function referred to in paragraph 69(ec)) during the relevant period that is reasonably referable to the licensee; and
 - (b) that part of the cost incurred (if any) by the Commission and by Comcare in carrying out their respective functions under the *Occupational Health and Safety Act 1991*, the *Work Health and Safety Act 2011* and the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011* during the relevant period that is reasonably referable to the licensee.
- (3) For the purposes of subsection (2), the relevant period is:
 - (a) in the case of the first licence fee payable in respect of the licence—the period starting on the date of commencement of the licence and ending on the next 30 June; or

- (b) in the case of a subsequent licence fee payable in respect of a financial year while the licence remains in force—that financial year.
- (4) The fee is payable to Comcare within such period after it is notified to the licensee as the Commission determines.

105 The Commission may vary the scope of a licence or extend its term

- (1) The Commission may, at any time while a licence is in force, on the written application of the licensee, vary the scope of the licence or extend its term.
- (2) Nothing in subsection (1) implies that an applicant whose licence, or licence as extended, has expired, or is to expire, may not apply for a new licence under this Part.

106 Suspension or revocation of licences at the instance of the Commission

- (1) If the Commission considers it appropriate to do so, the Commission may, by written notice given to the licensee:
- (a) suspend the licence for a specified period; or
 - (b) revoke the licence.
- (2) Before taking action under subsection (1), the Commission must follow such procedures, if any, as are specified in the Minister's directions as procedures preliminary to the suspension or revocation of a licence at the instance of the Commission.

107 Revocation of licence at request of licensee

The Commission may, at the written request of a licensee, by written notice to the licensee, revoke the licence held by the licensee.

Part VIII Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

Division 2 Powers of the Commission in relation to licences

Section 107A

107A Effect of suspension or revocation

The regulations may provide for the consequences of:

- (a) the suspension of a licence under section 106; or
- (b) the revocation of a licence under section 106 or 107.

Division 3—Authorisation to accept liability in respect of certain claims

108 Licence can authorise licensee to accept liability

- (1) A licence may provide that the licensee is authorised to accept liability to pay compensation and other amounts under this Act in respect of particular injury, loss or damage suffered by, or in respect of the death of, some or all of its employees under this Act.
- (2) The scope of the licence, so far as it authorises acceptance of liability to pay such compensation and other amounts, may be determined by the Commission.
- (3) The Commission may determine, as part of the scope of the licence, that the licensee may accept such liability in respect of such injury, loss, damage or death occurring at a time before the licence came into force.

108A The consequences of a licensee's authorisation to accept liability

- (1) If:
 - (a) a licensee is authorised to accept liability to pay compensation and other amounts under this Act in respect of particular injury, loss or damage suffered by, or in respect of the death of, some or all of its employees; and
 - (b) such injury, loss, damage or death occurs;then:
 - (c) the licensee is liable to pay compensation and other amounts under this Act in respect of that injury, loss, damage or death; and
 - (d) Comcare is not liable to pay compensation or other amounts under this Act in respect of that injury, loss, damage or death.
- (2) Nothing in subsection (1) affects Comcare's liability to pay compensation or other amounts under this Act in respect of a

Part VIII Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

Division 3 Authorisation to accept liability in respect of certain claims

Section 108A

particular injury, loss, damage or death for which Comcare would have been liable, but for the operation of the licence, to the extent that the liability is not a liability that the licensee is authorised to accept.

- (3) The fact that a licensee is authorised to accept liability to pay compensation and other amounts under this Act in respect of a particular injury, loss, damage or death does not render the licensee liable to have any proceedings (including proceedings under Part VI) brought against it in respect of that particular injury, loss, damage or death other than proceedings for the recovery of that compensation and those other amounts.

Note: If licensees are authorised to manage claims, proceedings may be brought against them in respect of the management of those claims (see subsection 108C(7)).

- (4) If proceedings have been brought against Comcare in respect of a particular injury, loss, damage or death for which a licensee is liable to pay compensation or other amounts under this Act, Comcare must inform the licensee, in writing, as soon as practicable, that the proceedings have been brought.
- (5) On being informed that proceedings have been brought against Comcare in respect of a particular injury, loss, damage or death, the court or tribunal before which the proceedings have been brought must, on application of the licensee, join the licensee as a party to the proceedings.
- (6) A decision in any proceedings referred to in subsection (4) is binding on Comcare and on the licensee concerned, whether or not the licensee has made application to become a party to the proceedings.
- (7) If a licensee who is a corporation is authorised to accept liability to pay compensation and other amounts under this Act in respect of a particular injury, loss or damage suffered by, or in respect of the death of, some or all of its employees after the licence comes into force then:

Section 108A

- (a) no law of a State or Territory relating to workers compensation applies to a licensee in respect of such injury, loss, damage or death; and
- (b) any liability or obligation of the corporation under a law of a State or Territory in respect of such injury, loss or damage suffered, or death occurring, before the licence came into force is unaffected.

Part VIII Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

Division 4 Authorisation to manage claims

Section 108B

Division 4—Authorisation to manage claims

108B Licence can authorise licensee to manage claims

- (1) A licence may authorise the licensee, or a specified person acting on the licensee's behalf, to manage some or all of the claims made by employees of the licensee under this Act.
- (2) The scope of the licence, so far as it authorises management by the licensee of claims made under this Act, may be determined by the Commission.
- (3) A licensee may at any time enter into a contract with another person for the management, on the licensee's behalf, of the claims that the licensee is authorised to manage.
- (4) If the licensee enters into such a contract it does not come into force unless and until the Commission has varied the licence to note the identity of the person with whom the licensee has contracted for the management of claims.
- (5) Nothing in this section implies that the scope of the licence, so far as it authorises management of claims by the licensee, may not extend to the management of claims that were made at a time before the licence came into force, whether or not the management of those claims has been commenced before the licence came into force.
- (6) The scope of the licence, so far as it authorises management of claims made by employees of an eligible corporation, must relate to the same employees of the corporation as those covered by the scope of the licence so far as it relates to acceptance of liability.

108C The consequences of a licensee's authorisation to manage claims

- (1) If a licensee is authorised to manage claims, the licensee must determine any particular claim that the licensee is authorised to

manage in accordance with the scope of its licence.

- (2) If a licensee is authorised to manage claims made before the licence comes into force, then, in respect of any particular claim that the licensee is authorised to manage:
 - (a) a determination made by Comcare that is in force immediately before the licence comes into force is taken, after that time, to have been a determination made by the licensee in relation to that claim; and
 - (b) any other thing done by Comcare that is in force immediately before the licence comes into force is taken, after that time, to have been done by the licensee in relation to that claim.
- (3) If a licensee is authorised to manage claims, then, in respect of any particular claim that the licensee is authorised to manage:
 - (a) any notice or claim given or made under Part V after the licence comes into force is to be given or made to the licensee; and
 - (b) any notice or claim given or made under Part V to Comcare, in force immediately before the licence comes into force, continues in force, after that time, as if it had been given or made to the licensee.
- (4) If:
 - (a) any proceedings (including proceedings under Part VI) to which Comcare is a party are brought in relation to a determination made, or thing done, by Comcare before a licence comes into force; and
 - (b) those proceedings have not been concluded before the licence comes into force;those proceedings may be continued after that time and, for the purpose of the proceedings as so continued, the licensee is taken to replace Comcare as a party to the proceedings.
- (5) If, after a licence comes into force:
 - (a) a determination made or other thing done by Comcare is treated under subsection (2) as having been made or done by the licensee; or

Part VIII Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

Division 4 Authorisation to manage claims

Section 108C

- (b) a notice or claim given or made under Part V to Comcare is treated under subsection (3) as if it had been given or made to the licensee; or
 - (c) proceedings (including proceedings under Part VI) to which Comcare is a party are treated under subsection (4) as proceedings to which the licensee is a party;
- Comcare must inform the licensee, as soon as practicable, of that determination made or other thing done, of that notice or claim, or of those proceedings.
- (6) If, in accordance with subsection (4), the licensee replaces Comcare as a party to the proceedings, the court or tribunal before which the proceedings have been brought must, on application by Comcare, join Comcare as a party to the proceedings.
 - (7) If a licensee is authorised to manage claims, any proceedings (including proceedings under Part VI) that may be brought:
 - (a) in relation to a determination made, or taken to have been made, by the licensee in managing such a claim; or
 - (b) in relation to any thing done, or taken to have been done, by the licensee in managing such a claim;must be brought against the licensee.
 - (8) If proceedings are brought against the licensee in accordance with subsection (7):
 - (a) the licensee must inform Comcare as soon as practicable that the proceedings have been brought; and
 - (b) the court or tribunal before which the proceedings have been brought must, on application by Comcare, join Comcare as a party to the proceedings.
 - (9) An application by Comcare under subsection (6) or (8):
 - (a) may be made by filing a notice in the registry of the court or tribunal concerned; and
 - (b) must be notified to the other parties to the proceeding by serving on them a copy of the notice so filed.

- (10) A decision in proceedings referred to in subsection (4) or (7) is binding on the licensee and on Comcare, whether or not Comcare is joined as a party to the proceedings.

Part VIII Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

Division 5 Conditions of a licence

Section 108D

Division 5—Conditions of a licence

108D The Commission may grant licence on conditions

- (1) The Commission may, in granting a licence under this Part, express the licence to be subject to any conditions it considers are necessary to achieve the objects of this Act in its application to the licensee. Without limiting the matters the conditions may deal with, the conditions may include:
 - (a) a condition that the licensee, and any person acting on its behalf, will comply with the requirements of the Act and any relevant directions given by the Commission; and
 - (b) a condition that the licensee will pay such licence fees and other fees as are calculated in such manner, and payable at such times, as the Commission specifies; and
 - (c) a condition that the licensee will maintain such funds, and in such form, as the Commission directs for the purpose of enabling the due discharge of the licensee's liability to pay:
 - (i) compensation and other amounts under this Act; or
 - (ii) so much of that liability as exceeds a specified amount; and
 - (d) a condition that the licensee will obtain bank or other guarantees for the due discharge of the licensee's liability to pay:
 - (i) compensation and other amounts under this Act; or
 - (ii) so much of that liability as exceeds a specified amount; and
 - (e) a condition that the licensee will comply with the requirements of any applicable laws of the Commonwealth, States and Territories with respect to the safety, health and rehabilitation of employees; and
 - (f) a condition that, in all circumstances or specified circumstances, the licensee will not cause or permit to be made on its behalf to a court or tribunal any submission that

Section 108D

- Comcare or the Commission has requested the licensee not to make; and
- (g) conditions concerning performance of functions in relation to the licence by persons other than the licensee, including conditions concerning the reconsideration of determinations made by the licensee; and
 - (h) conditions requiring provision of information and notifications in respect of specified events.
- (2) At any time while the licence is in force the Commission may vary the conditions to which the licence is subject by notice in writing given to the licensee. The notice must set out the terms of the variation and the date of effect of the variation, which must not be a date earlier than the date of notification of the variation.

Division 6—Miscellaneous

108E Functions of licensees

The functions of a licensee include, in addition to any functions conferred under other legislation or, in the case of a corporation, in the constitution of the corporation, the following additional functions:

- (a) if the licence confers on the licensee an authority to pay compensation or other amounts under this Act—to make those payments accurately and quickly; and
- (b) if the licence confers on the licensee an authority to manage claims under this Act—to determine those claims accurately and quickly and to take all necessary action in respect of the subsequent management of those claims; and
- (c) to maintain contact with the Commission and with Comcare to ensure that, as far as practicable, there is equity of outcomes resulting from administrative practices and procedures used by Comcare and the licensee in the performance of their respective functions; and
- (d) to do anything, and to meet any obligation, the doing or meeting of which:
 - (i) is incidental to the performance of either or both of the functions referred to in paragraphs (a) and (b); and
 - (ii) would be required of Comcare if Comcare had responsibility for the performance of the function referred to in either or both of those paragraphs; and
- (e) to comply with the conditions to which the licence is subject.

108F Powers of licensee

A licensee has power to do all things necessary or convenient to be lawfully done for, or in connection with, the performance of functions conferred by section 108E.

108G Date of effect of certain notices under this Part

Any notice given by the Commission to a person that concerns:

- (a) the grant, extension, suspension or revocation of a licence; or
- (b) the variation of the conditions to which a licence is subject;

has effect on and after a date specified in the notice that is not earlier than the date the notice is given to the person.

108H Delegation by licensed authority

A licensed authority may, by writing signed by its principal officer, delegate to an officer of, or a person employed by:

- (a) that authority; or
- (b) the Commonwealth; or
- (c) any other Commonwealth authority;

all or any of the powers and functions of the licensed authority under this Act.

Part IX—Miscellaneous

109A Jurisdiction of courts with respect to extraterritorial offences

- (1) Subject to this section, the several courts of the States are invested with federal jurisdiction, and jurisdiction is conferred on the several courts of the external Territories, with respect to external offences.
- (2) The jurisdiction invested in, or conferred on, courts by subsection (1) is invested or conferred within the limits (other than limits based on the places at which offences are committed) of their several jurisdictions, whether those limits are as to subject-matter or otherwise.
- (3) Jurisdiction with respect to an external offence is not conferred on a court of an external Territory unless the offence was committed in that Territory.
- (4) Subject to this section, the *Judiciary Act 1903* applies in relation to offences in relation to which this section applies.
- (5) In this section:
external offence means an offence against this Act committed outside Australia.

109 Determinations to be in writing

- (1) A determination under this Act shall be in writing.
- (2) A determination shall be taken to be in writing if it is entered into, or recorded with the use of, a computer.

110 Money paid to relevant authority for benefit of person

- (1) Where any money is payable under this Act to an employee who is under a legal disability, the money shall be paid to, or in

Section 111

accordance with the directions of, the relevant authority for the benefit of the employee and, when so paid, shall, for the purposes of this Act other than this section, be deemed to have been paid to the employee.

- (2) Where money is held by a relevant authority under this Act for the benefit of a person, the relevant authority shall, subject to subsections (3) and (4), invest the money in any manner for the time being allowed by an Act, a State Act or an Ordinance of a Territory for the investment of trust money and income resulting from any such investment shall be deemed to form part of the first-mentioned money.
- (3) A relevant authority may pay any money referred to in subsection (2) to, or in accordance with the directions of, the person or apply the money in such manner as it thinks fit, for the benefit of the person.
- (4) Where money is held by a relevant authority for the benefit of an employee who is under a legal disability, the relevant authority shall, when the employee ceases to be under a legal disability, pay the money to, or in accordance with the directions of, the employee or, if the money has been invested, deal with the investments in accordance with the directions of the employee.

111 Provisions applicable on death of beneficiary

- (1) Subject to this section, where a determination is made that an amount of compensation is payable under this Act to a person and the person dies before the amount is paid, the amount forms part of the estate of the person.
- (2) Subject to subsections (2A), (3), (4) and (5), where a relevant authority holds any money or investments for the benefit of a person under this Act and that person dies, that money or those investments form part of the estate of that person.
- (2A) Subsections (3) and (4) do not apply in relation to a relevant authority that is:
 - (a) a licensed corporation; or

Section 112

- (b) a Comcare subsidiary, in respect of the performance of functions under a contract with a licensed corporation.
- (3) Where a person referred to in subsection (1) dies intestate and there is no other person apparently entitled to claim the estate (including that amount of compensation) of that person, subsection (1) does not apply and, subject to subsection (5), if the amount of compensation is held by a relevant authority, it shall pay the amount to the Commonwealth.
- (4) Where a person referred to in subsection (2) dies intestate and there is no other person apparently entitled to claim the estate (including that money or those investments) of that person, subsection (2) does not apply and, subject to subsection (5), the relevant authority shall pay the money, or realise the investments and pay the proceeds of the realisation, as the case may be, to the Commonwealth.
- (5) Nothing in this section prevents a relevant authority from rendering any provision of this section inoperative in a particular case by making a decision under section 62.

112 Assignment, set-off or attachment of compensation

- (1) An assignment of any compensation payable under this Act is void as against a relevant authority.
- (2) Except as provided by this Act, an amount payable by an employee or a dependant of a deceased employee to the Commonwealth or a relevant authority shall not be set off against the amount of any compensation payable under this Act to the employee or for the benefit of the dependant.
- (3) Except as provided by the *Maintenance Orders (Commonwealth Officers) Act 1966*, the *Child Support Act 1988* or the *Social Security Act 1991*, or by, or by regulations under, the *Family Law Act 1975*, any compensation payable under this Act is not subject to attachment.

112A Making of compensation payments through employers of employees paid out of relevant money

- (1) This section applies if:
 - (a) Comcare is liable to pay an amount of compensation under Division 3 of Part II to an employee; and
 - (b) payments by the employer to the employee of salary or wages (ignoring section 116) are made out of relevant money.
- (2) Comcare may instead make a payment to the employer in respect of the compensation.
- (3) Before making the payment, Comcare must advise the employer of its intention to do so (the payment is called the *advised payment*).
- (4) Subject to section 23A, the employer must:
 - (a) before receiving the advised payment, make a payment of an equal amount (the *anticipatory payment*) to the employee; or
 - (b) on receiving the advised payment, hold it for the benefit of the employee until such time as the employer pays it to the employee.

Note: Section 23A requires the employer to set off repayments of salary etc. made to the employee in relation to the pre-determination period against amounts payable by the employer under this subsection.
- (5) When the employer pays the employee the anticipatory payment, or the payment that it holds for the benefit of the employee, the payment is taken for the purposes of this Act (other than section 90C) to be a payment by Comcare in discharge of its liability to pay the compensation.
- (6) Also, in the case of the anticipatory payment:
 - (a) to avoid doubt, the provision of an Act that appropriates the Consolidated Revenue Fund for the purposes of any payments by the employer to the employee of salary or wages (ignoring section 116) also appropriates the Consolidated Revenue Fund for the purposes of the anticipatory payment; and

Section 112B

- (b) when the advised payment is received by the employer, it is taken to be:
 - (i) a repayment of the anticipatory payment; and
 - (ii) the receipt of an amount for the purposes of section 74 of the *Public Governance, Performance and Accountability Act 2013*.

112B Making of compensation payments through employers of employees not paid out of relevant money

- (1) This section applies if:
 - (a) Comcare is liable to pay an amount of compensation under Division 3 of Part II to an employee; and
 - (b) payments by the employer to the employee of salary or wages (ignoring section 116) are not made out of relevant money.
- (2) Comcare may instead make a payment to the employer in respect of the compensation.
- (3) Before making the payment, Comcare must advise the employer of its intention to do so (the payment is called the *advised payment*).
- (4) Subject to section 23A, the employer must, either before or after receiving the advised payment, make a payment of an equal amount to the employee, out of money that the employer holds on its own account.

Note: Section 23A requires the employer to set off repayments of salary etc. made to the employee in relation to the pre-determination period against amounts payable by the employer under this subsection.
- (5) The payment by the employer is taken for the purposes of this Act (other than section 90C) to be a payment by Comcare in discharge of its liability to pay the compensation.
- (6) When the advised payment is received by the employer, it is money that the employer holds on its own account.

113 Recovery of amounts due to relevant authority

Where:

- (a) a person (in this section called *the debtor*) is liable to pay an amount to a relevant authority under this Act; and
- (b) the relevant authority holds on behalf of the debtor:
 - (i) money, being compensation payable under this Act for the benefit of the debtor; or
 - (ii) investments acquired out of money of a kind referred to in subparagraph (i);

the relevant authority shall recover from the money so held, or shall realise the investments so held and recover from the proceeds of the realisation, an amount not exceeding the amount referred to in paragraph (a) and the recovery of that amount is, to the extent of the amount, a discharge of the liability of the debtor to the relevant authority and of the relevant authority to the debtor.

114 Recovery of overpayments

- (1) Subject to subsection (1A), if:
 - (a) an amount of compensation under this Act has been paid to a person in consequence of a false or misleading statement or representation or in consequence of a failure or omission to comply with a provision of this Act;
 - (b) an amount of compensation that has been paid to a person under this Act should not have been paid; or
 - (c) a person is liable to pay an amount to a relevant authority under this Act;

the amount concerned is recoverable by the relevant authority from the person in a court of competent jurisdiction as a debt due to the relevant authority.

- (1A) Paragraph (1)(b) does not apply to an amount of compensation that the relevant authority is entitled to recover under section 114B.

- (2) Where an amount is recoverable from a person under subsection (1) and an amount is payable under this Act to or for the

Section 114A

benefit of that person, the recoverable amount may be deducted from the amount so payable.

114A Notice to Comcare of retirement of employee

- (1) If:
- (a) an employee of:
 - (i) the Commonwealth; or
 - (ii) a Commonwealth authority that holds a licence under Part VIII and is required, in accordance with the conditions to which that licence is subject, to notify Comcare of the retirement of the employee; or
 - (iii) a Commonwealth authority that is not the holder of a licence under Part VIII;is receiving, or is entitled to receive, compensation under this Act; and
 - (b) the appropriate officer in relation to the employee becomes aware that the employee has retired from his or her employment;

then, as soon as practicable after becoming so aware, the officer must give written notice to Comcare stating that the employee has retired and the date of the retirement and identifying the superannuation scheme of which the employee was a member at the time of his or her retirement.

- (2) In this section:

appropriate officer, in relation to an employee, means:

- (a) if the employee is employed in an Entity—the principal officer of that Entity; or
- (b) if the employee is employed by the Commonwealth otherwise than in an Entity—a person prescribed by the regulations; or
- (c) if the employee is employed by a Commonwealth authority—the principal officer of that authority.

114B Recovery of overpayment to retired employee

- (1) If:
- (a) an employee retires from his or her employment; and
 - (b) the retired employee is or may be entitled to a pension or a lump sum, or both a pension and a lump sum, under a superannuation scheme; and
 - (c) Comcare or a licensed authority is of the opinion that it may pay, or may have paid, to the retired employee an amount or amounts of compensation under this Act in excess of the amount or amounts that he or she was entitled to receive because of section 20, 21 or 21A;
- the following provisions of this section apply.
- (2) Comcare or the authority, as the case may be, may give written notice to the administrator of the scheme:
- (a) stating that Comcare or the authority may make, or may have made, an overpayment of compensation to the retired employee; and
 - (b) requiring the administrator to tell Comcare or the authority whether the retired employee has received any payment in respect of his or her entitlement referred to in paragraph (1)(b) or whether all the retired employee's benefits under the scheme have been deferred; and
 - (c) requiring the administrator, if the retired employee has not received any such payment (unless all the retired employee's benefits under the scheme have been deferred):
 - (i) not to pay any pension or lump sum to the retired employee until the administrator receives a notice from Comcare or the authority under subsection (5); and
 - (ii) to give Comcare or the authority, as soon as practicable, particulars of the rate of pension, or the lump sum worked out as at the date of retirement, or the rate of pension and the lump sum as so worked out, as the case may be, that is payable to the retired employee under the superannuation scheme.

Section 114B

- (3) Comcare or the authority, as the case may be, must give to the retired employee a written notice stating that it has given a notice to the administrator of the scheme under subsection (2) and explaining how this section works.
- (4) The following provisions apply if the retired employee has not received any payment in respect of his or her entitlement referred to in paragraph (1)(b) but do not apply if all the retired employee's benefits under the scheme have been deferred.
- (5) When Comcare or a licensed authority receives from the administrator of the superannuation scheme particulars of the rate of pension, or the lump sum, or the rate of pension and the lump sum, payable to the retired employee, then Comcare or the authority, as the case may be, must, within 2 working days after receiving those particulars:
 - (a) determine whether an overpayment of compensation to the employee has occurred; and
 - (b) give written notice to the administrator:
 - (i) if it determines that no overpayment has occurred—stating that fact; or
 - (ii) otherwise—stating the amount of the overpayment and requiring the administrator to pay that amount to Comcare or the authority in accordance with this section.
- (6) Comcare or a licensed authority must not reduce the rate or amount of compensation payable to the retired employee under this Act until it has given to the administrator of the superannuation scheme the notice referred to in subsection (5).
- (7) The amount to be stated in the notice under subparagraph (5)(b)(ii) is the amount by which the sum of the amounts of any compensation paid after the retirement of the employee exceeds the sum of the amounts of compensation that should have been paid because of section 20, 21 or 21A, as the case requires.
- (8) The administrator of the superannuation scheme is to pay the amount of the overpayment of compensation to Comcare or the

Section 114B

licensed authority in accordance with subsections (9) and (10) out of the payments of pension or of a lump sum that would otherwise have been made by the administrator to the retired employee.

- (9) If the amount of any payment of pension or of a lump sum that would otherwise have been made by the administrator to the relevant employee on any day is less than or equal to the adjusted overpayment worked out as at that day, that amount is to be paid by the administrator to Comcare or the authority instead of to the retired employee.
- (10) If the amount of any payment of pension or of a lump sum that would otherwise have been made by the administrator to the relevant employee on any day is greater than the adjusted overpayment worked out as at that day, so much of that amount as is equal to that adjusted overpayment is to be paid by the administrator to Comcare or the authority instead of to the retired employee.
- (11) For the purposes of subsections (9) and (10), the adjusted overpayment as at a particular day is the amount of the original overpayment less any amounts that have been paid by the administrator to Comcare or the authority before that day in reduction of the original overpayment.
- (12) The payment by the administrator of an amount to Comcare or a licensed authority under a notice given under subsection (5) discharges, to the extent of that amount:
 - (a) the liability of the administrator to pay that amount to the retired employee; and
 - (b) the liability of the employee to pay that amount to Comcare or the authority, as the case may be.
- (13) The administrator of a superannuation scheme must comply with a requirement made of the administrator under this section by Comcare or a licensed authority. However, failure to comply with the requirement is not an offence.

Section 114C

- (14) This section has effect despite:
- (a) sections 143 and 143A of the *Superannuation Act 1922*; and
 - (b) sections 85 and 85A of the *Defence Force Retirement Benefits Act 1948*; and
 - (c) sections 129 and 130 of the *Defence Force Retirement and Death Benefits Act 1973*; and
 - (d) sections 118 and 119 of the *Superannuation Act 1976*.
- (15) In this section:
- working day**, in relation to a notice to be given by Comcare or a licensed authority, means a day other than a Saturday, a Sunday, or a day that is a public holiday in any State or Territory.

114C Comcare may write off debt

- (1) Comcare may decide, in writing, to write off a debt due to Comcare.
- (2) A decision made under subsection (1) takes effect:
- (a) if no day is set out in the decision—on the day on which the decision is made; or
 - (b) if a day is set out in the decision—on the day so set out (whether that day is before, on, or after, the day on which the decision is made).

Note: If Comcare writes off a debt, this means an administrative decision has been made that, in the circumstances, there is no point in trying to recover the debt. In law, however, the debt still exists and may later be pursued.

114D Comcare may waive debt

- (1) Comcare may decide, in writing, to waive its right to recover from a person the whole or a part of a debt due to Comcare.
- (2) In exercising the power under subsection (1), Comcare must act in accordance with directions from time to time in force under subsection (3).

- (3) The Minister may, by legislative instrument:
 - (a) give a direction to Comcare relating to the exercise of its power under subsection (1); and
 - (b) revoke or vary a direction so given.
- (4) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a direction given by the Minister under subsection (3).
- (5) A decision of Comcare under subsection (1) takes effect:
 - (a) if no day is set out in the decision—on the day on which the decision is made; or
 - (b) if a day is set out in the decision—on the day so set out (whether that day is before, on, or after the day on which the decision is made).

Note: If Comcare waives its rights to recover, this is a permanent bar to recovery of the debt—the debt effectively ceases to exist.

115 Deduction of overpayments of repatriation pensions

(1A) Where:

- (a) an amount of pension has been paid to a person under the *Veterans' Entitlements Act 1986* in respect of the incapacity or death of a veteran who has rendered operational service within the meaning of Part II of that Act; and
- (b) that amount is not payable to that person by virtue of Division 5A of Part II of the *Veterans' Entitlements Act 1986*;

that amount is recoverable from that person by deducting it from any amounts of compensation payable to that person under this Act in respect of the injury to, or death of, the veteran.

(1) Where:

- (a) an amount of pension has been paid to a person under the *Veterans' Entitlements Act 1986* in respect of the incapacity or death of a member of the Forces, or a member of a Peacekeeping Force, within the meaning of Part IV of that Act; and

Section 116

- (b) that amount is not payable to that person by virtue of section 74 of that Act;
that amount is recoverable from that person by deducting it from any amounts of compensation payable to that person under this Act in respect of the injury to, or death of, the member.
- (2) For the purposes of subsections (1A) and (1), a person authorised by the Repatriation Commission may, by writing signed by the person, certify that:
- (a) an amount specified in the certificate has been paid by way of pension under the *Veterans' Entitlements Act 1986* to a person specified in the certificate;
 - (b) that amount was paid in respect of the incapacity or death of a person specified in the certificate;
 - (c) the person referred to in paragraph (b) is or was a veteran within the meaning of Part II of that Act or a member of the Forces, or a member of a Peacekeeping Force, within the meaning of Part IV of that Act; and
 - (d) by virtue of Division 5A of Part II, or section 74, of that Act, the amount referred to in paragraph (a) is not payable to the person referred to in paragraph (a).
- (3) For the purposes of subsection (1A) or (1), a certificate under subsection (2) is prima facie evidence of the matters certified.
- (4) Nothing in this section prevents the recovery of an amount referred to in subsection (1A) or (1) otherwise than in accordance with that subsection, but such amount shall not be recovered twice.

116 Employees on compensation leave

- (1) In spite of the provisions of any other Act or an industrial award, determination or agreement, an employee is not entitled to be granted any kind of leave of absence with pay (other than maternity leave with pay) during, or in respect of, any period when the employee is or was on post-determination compensation leave but:
- (a) sick leave and recreation leave entitlements continue to accrue in relation to the employee during each of the first 45

weeks during which he or she is on post-determination compensation leave; and

- (b) long service leave entitlements continue to accrue in relation to the employee during the whole of the period of the post-determination compensation leave;

as if the employee were not absent from work.

- (2) In this section:

post-determination compensation leave means compensation leave that takes place after the end of the pre-determination period in relation to the claim for compensation.

117 Compensation payable to locally engaged overseas employees

- (1) This section applies to employees who were engaged outside Australia for employment outside Australia and are performing the duties of their employment outside Australia.
- (2) Where a compensation scheme in force in a foreign country applies (whether because of contributions made by the Commonwealth or a licensed corporation under the scheme or otherwise) in respect of the employment by the Commonwealth or the licensed corporation in that country of employees to whom this section applies, or such a compensation scheme would, but for this Act, be so applicable, this Act does not apply in respect of the employment by the Commonwealth or the licensed corporation in that country of those employees.
- (3) Where a compensation scheme in force in a foreign country:
- (a) does not, and, but for this Act, would not apply, in respect of the employment by the Commonwealth or a licensed corporation in that country of a class of employees to whom this section applies; and
- (b) does apply (whether because of contributions made by the Commonwealth or the licensed corporation under the scheme or otherwise) in respect of the employment by the Commonwealth or the licensed corporation in that country of

Section 117

other such employees or would, but for this Act, be so applicable;

that compensation scheme shall be taken to apply in respect of the employment by the Commonwealth or a licensed corporation in that country of the employees referred to in paragraph (a) and the relevant authority is liable to provide benefits for those employees in accordance with that compensation scheme in respect of their employment by the Commonwealth or a licensed corporation in that country.

- (4) Where, in a foreign country, there is no compensation scheme in force that applies, or, but for this Act, would apply, in respect of the employment by the Commonwealth or a licensed corporation in that country of employees to whom this section applies, but there is a compensation scheme in force in that country that applies in respect of persons employed by the Government of that country, that compensation scheme shall be taken to apply in respect of the employment by the Commonwealth or the licensed corporation of those employees in that country and the relevant authority is liable to provide benefits for those employees in accordance with that compensation scheme in respect of that employment.
- (5) A relevant authority is not liable, otherwise than under this section, to pay compensation in respect of the employment of an employee to whom this section applies in circumstances where a compensation scheme referred to in this section applies, or is to be taken to apply, in respect of that employment.
- (6) In this section:
 - (a) a reference to a foreign country includes a reference to an external Territory;
 - (b) a reference to the Government of a foreign country, in relation to an external Territory, is a reference to the Administration of that Territory;
 - (c) a reference to benefits is a reference to compensation benefits for persons in the event of their death or incapacity due to an injury or disease occurring in circumstances connected with their employment; and

- (d) a reference to a compensation scheme is a reference to a scheme (whether constituted by a law or not) for the provision of compensation benefits.

118 Double benefits

- (1) If:
- (a) an employee recovers State workers' compensation in respect of an injury or the loss of, or damage to, property used by the employee; or
 - (b) State workers' compensation is recovered by, or for the benefit of, a dependant of a deceased employee;
- compensation is not payable under this Act to that employee in respect of that injury, loss or damage, or to, or for the benefit of, that dependant in respect of the injury that resulted in the death.
- (2) If, after any compensation has been paid by a relevant authority under this Act:
- (a) to an employee in respect of an injury or the loss of, or damage to, property used by the employee; or
 - (b) to, or for the benefit of, a dependant of a deceased employee;
- any State workers' compensation is recovered by the employee in respect of that injury, loss or damage or to, or for the benefit of, the dependant in respect of the injury that resulted in the death, as the case may be, the relevant authority may recover the amount of compensation paid by it from the person to whom it was paid in a court of competent jurisdiction as a debt due to the authority.
- (3) A relevant authority that has received a claim may require the claimant to give it a statutory declaration stating whether any State workers' compensation has been paid to or in respect of the claimant in respect of the injury or loss of, or damage to, property, as the case may be, to which the claim relates.
- (4) Where a claimant for compensation refuses or fails, without reasonable excuse, to give a statutory declaration under subsection (3), the claimant's rights to compensation under this Act in respect of the injury or loss of, or damage to, property to which the claim relates, and to institute or continue any proceedings

Section 119

under this Act in relation to that compensation, are suspended until the statutory declaration is given.

- (5) Where a claimant's right to compensation is suspended under subsection (4), compensation is not payable in respect of the period of the suspension.
- (6) In this section:

State workers' compensation means compensation recoverable under a law of a State or of a Territory, or of a foreign country, relating to workers' compensation.

119 Compensation where State compensation payable

- (1) If:
 - (a) an employee recovers State compensation in respect of an injury to the employee or in respect of the loss of, or damage to, property used by the employee; or
 - (b) State compensation is recovered by, or for the benefit of, a dependant of a deceased employee;the succeeding provisions of this section have effect.
- (2) Subject to this section, the compensation that is payable under this Act to the employee in respect of the injury, loss or damage, or for the benefit of the dependant in respect of the injury that resulted in the death, as the case may be, is so much (if any) of the compensation under this Act that, but for this section, would be so payable as exceeds the amount of State compensation recovered by the employee or by, or for the benefit of, the dependant, as the case may be.
- (3) Subject to this section, if, before the recovery of State compensation by or for the benefit of the employee or dependant, compensation under this Act was paid to the employee by a relevant authority in respect of the injury, loss or damage, or for the benefit of the dependant in respect of the injury that resulted in the death, as the case may be, the employee or dependant is liable to pay to the relevant authority:

- (a) the amount of the compensation paid by it under this Act; or
 - (b) the amount of the State compensation recovered by the employee or for the benefit of the dependant;
- whichever is less.
- (4) Where:
- (a) a person (in this subsection called *the debtor*) is liable to pay an amount to a relevant authority under this section; and
 - (b) any other person holds on behalf of the debtor:
 - (i) money, being compensation payable under this Act for the benefit of, or State compensation payable to, the debtor; or
 - (ii) investments acquired out of money of a kind referred to in subparagraph (i);
- the other person shall:
- (c) deduct from the money so held, or realise those investments so held and deduct from the proceeds of the realisation, an amount not exceeding the amount referred to in paragraph (a); and
 - (d) pay the amount so deducted to the relevant authority;
- and the payment of that amount is, to the extent of the amount paid, a discharge of the liability of the debtor to the relevant authority and of the other person to the debtor.
- (5) A reference in subsection (3) to compensation under this Act that was paid for the benefit of a dependant does not include a reference to compensation paid under subsection 17(5).
- (6) Where an employee, or a dependant of an employee, establishes, to the satisfaction of the relevant authority, that the whole or part of the State compensation referred to in subsection (2) recovered by the employee or by, or on behalf of, the dependant, as the case may be, did not relate to an injury, loss or damage, in respect of which compensation is payable under this Act, this section has effect in relation to that employee or that dependant, as the case may be, as if the amount of the State compensation recovered by that employee or that dependant were an amount equal to so much (if any) of the amount of the specified compensation as did relate to

Section 120

an injury, loss or damage, in respect of which compensation is payable under this Act to that employee or that dependant, as the case may be.

(7) In this section:

State compensation means compensation recoverable under a specified law.

specified law means a law of a State or of a Territory that provides for the payment of compensation, other than workers' compensation, and is declared by the Minister, by legislative instrument, to be a specified law for the purposes of this Act.

120 Notice of departure from Australia etc.

- (1) This section applies to a person to whom payments of compensation under section 19 are being made, and have been made for a period of 3 months or longer, by a relevant authority.
- (2) Where the person proposes to leave Australia (whether or not the person proposes to return to Australia), the person may give the relevant authority a notice in writing:
 - (a) stating that the person proposes to leave Australia; and
 - (b) specifying the day on which the person proposes to leave.
- (3) Where the person has left Australia (whether or not the person proposes to return to Australia) without giving a notice of the kind referred to in subsection (2) to the relevant authority, the person shall, within 7 days after the day on which the person left Australia, send the relevant authority a notice in writing:
 - (a) stating that the person has left Australia; and
 - (b) specifying the day on which the person did so.
- (4) Where the person is absent from Australia for a period of more than 3 months, the person shall:
 - (a) within 7 days after the expiration of the period of 3 months commencing on the day on which the person left Australia; and

- (b) within 7 days after the expiration of each successive period of 3 months (if any) ending while the person is still absent from Australia;

give the relevant authority a notice in writing setting out particulars of the residential address of the person on the day on which the notice is given.

Penalty: 5 penalty units.

- (5) Subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

121A Confidential commercial information not to be published

If a provision of this Act requires the publication of any matter relating to a licensee:

- (a) the provision is not taken to require the publication of confidential commercial information; and
- (b) it is a sufficient compliance with the requirement to publish a general description of the matter that does not disclose any confidential commercial information.

122 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

122A Legislative rules

- (1) The Minister may, by legislative instrument, make rules (*legislative rules*) prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the legislative rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Section 122A

- (2) To avoid doubt, the legislative rules may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.

Part X—Transitional provisions

Division 1—Preliminary

123 Interpretation

In this Part:

combined benefit, in relation to a former employee, means an amount equal to the sum of:

- (a) the amount of compensation payable to the former employee under this Act; and
- (b) the employee's superannuation amount.

commencing day means the day on which this Part commences.

former employee means a person who, immediately before the commencing day, was receiving weekly payments of compensation under the 1971 Act in respect of an injury resulting in an incapacity and had ceased to be an employee within the meaning of that Act before that day.

total benefit, in relation to a former employee, means an amount equal to the sum of:

- (a) the amount of compensation payable per week to the former employee under the 1971 Act; and
- (b) the employee's superannuation amount.

1971 amount, in relation to a former employee, means the amount of compensation that was, immediately before the commencing day, payable per week to the former employee under the 1971 Act.

123A Injuries suffered before the commencing day

A reference in this Part to an injury suffered before the commencing day is a reference to an injury within the meaning of whichever of the 1912 Act, the 1930 Act or the 1971 Act was in force when the injury was suffered, as that Act was then in force.

Division 2—Transitional provisions

124 Application of Act to pre-existing injuries

- (1) Subject to this Part, this Act applies in relation to an injury, loss or damage suffered by an employee, whether before or after the commencing day.
- (1A) Subject to this Part, a person is entitled to compensation under this Act in respect of an injury, loss or damage suffered before the commencing day if compensation was, or would have been, payable to the person in respect of that injury, loss or damage under the 1912 Act, the 1930 Act or the 1971 Act.
- (2) A person is not entitled to compensation under this Act in respect of an injury, loss or damage suffered before the commencing day if compensation was not payable in respect of that injury, loss or damage:
 - (a) where the injury, loss or damage was suffered before the commencement of the 1930 Act—under the 1912 Act;
 - (b) where the injury, loss or damage was suffered after the commencement of the 1930 Act but before the commencement of the 1971 Act—under the 1930 Act as in force when the injury, loss or damage was suffered; or
 - (c) in any other case—under the 1971 Act as in force when the injury, loss or damage was suffered.
- (3) A person is not entitled to compensation under section 24 or 25 in respect of a permanent impairment, or under section 17 in respect of the death of an employee, being an impairment or death that occurred before the commencing date, if:
 - (a) the person received compensation of a lump sum in respect of that impairment or death under the 1912 Act, the 1930 Act or the 1971 Act; or
 - (b) the person was not entitled to receive compensation of a lump sum in respect of that impairment or death:

- (i) where the impairment or death occurred before the commencement of the 1930 Act—under the 1912 Act;
 - (ii) where the impairment or death occurred after the commencement of the 1930 Act but before the commencement of the 1971 Act—under the 1930 Act as in force when the impairment or death occurred; or
 - (iii) in any other case—under the 1971 Act as in force when the impairment or death occurred.
- (4) The amount of compensation (if any) that a person is, by virtue of this section, entitled to receive under section 24 or 25 in respect of a permanent impairment, or under section 17 in respect of the death of an employee, being an impairment or death that occurred before the commencing day, shall be the same as the amount of the compensation that would have been payable to that person, if this Act had not been enacted, under:
- (a) where the impairment or death occurred before the commencement of the 1930 Act—the 1912 Act;
 - (b) where the impairment or death occurred after the commencement of the 1930 Act but before the commencement of the 1971 Act—the 1930 Act as in force when the impairment or death occurred; or
 - (c) in any other case—the 1971 Act as in force when the impairment or death occurred.
- (5) A person is not entitled to compensation under section 29 in respect of any period occurring before the commencing day.
- (6) A person is not entitled to compensation under subsection 17(5) in respect of the death of an employee, or under section 19, 20, 21, 22 or 31 in respect of an incapacity, where the compensation relates to a period occurring before the commencing day, if:
- (a) that person received weekly payments of compensation in respect of that death or incapacity in relation to that period under the 1912 Act, the 1930 Act or the 1971 Act; or
 - (b) that person was not entitled to receive weekly payments of compensation in respect of that death or incapacity in relation to that period:

Section 124

- (i) where the death or period of incapacity occurred before the commencement of the 1930 Act—under the 1912 Act;
 - (ii) where the death or period of incapacity occurred after the commencement of the 1930 Act but before the commencement of the 1971 Act—under the 1930 Act as in force when the death or period of incapacity occurred; or
 - (iii) in any other case—under the 1971 Act as in force when the death or period of incapacity occurred.
- (7) The rate of compensation (if any) that a person is, by virtue of this section, entitled to receive under subsection 17(5) in respect of the death of an employee, or under section 19, 20, 21, 22 or 31 in respect of an incapacity, where the compensation relates to a period occurring before the commencing day, shall be the same as the rate of compensation that would have been payable to that person in relation to that period, if this Act had not been enacted, under:
 - (a) where the period occurred before the commencement of the 1930 Act—the 1912 Act;
 - (b) where the period occurred after the commencement of the 1930 Act but before the commencement of the 1971 Act—the 1930 Act as in force during the period; or
 - (c) in any other case—the 1971 Act as in force during the period.
- (8) A person is not entitled to compensation under subsection 16(1) or (6) or section 18 in respect of any cost, the liability to pay which arose before the commencing day, or of any expenditure incurred before that day, if:
 - (a) an amount was paid in respect of that cost or expenditure under the 1912 Act, the 1930 Act or the 1971 Act; or
 - (b) an amount was not payable in respect of that cost or expenditure:
 - (i) where the liability for the cost arose, or the expenditure was incurred, before the commencement of the 1930 Act—under the 1912 Act;

- (ii) where the liability arose, or the expenditure was incurred, after the commencement of the 1930 Act but before the commencement of the 1971 Act—under the 1930 Act as in force when the liability arose or the expenditure was incurred; or
 - (iii) in any other case—under the 1971 Act as in force when the liability arose or the expenditure was incurred.
- (9) The amount of the compensation (if any) that is, by virtue of this section, payable under subsection 16(1) or (6) or section 18 in respect of any cost, the liability to pay which arose before the commencing day, or of any expenditure incurred before that day, shall be the same as the amount that would have been payable in respect of that cost or expenditure, if this Act had not been enacted, under:
 - (a) where the liability for the cost arose, or the expenditure was incurred, before the commencement of the 1930 Act—the 1912 Act;
 - (b) where the liability arose, or the expenditure was incurred, after the commencement of the 1930 Act but before the commencement of the 1971 Act—the 1930 Act as in force when the liability arose or the expenditure was incurred; or
 - (c) in any other case—the 1971 Act as in force when the liability arose or the expenditure was incurred.
- (10) Where:
 - (a) proceedings for the recovery of compensation under the 1912 Act, in respect of any injury suffered before the commencement of the 1930 Act, were not maintainable by a person because of section 5 of the 1912 Act;
 - (b) a claim for compensation by a person under the 1930 Act, in respect of an injury suffered after the commencement of the 1930 Act but before the commencement of the 1971 Act, was not admissible because of section 16 of the 1930 Act; or
 - (c) a claim for compensation by a person under the 1971 Act, in respect of an injury suffered after the commencement of the 1971 Act but before 1 July 1986, was not admissible because

Section 124A

of section 54 of the 1971 Act, as that section was in force before 1 July 1986;

that person is not entitled to compensation under this Act in respect of that injury.

- (11) Section 48 does not apply where the damages referred to in that section were recovered before the commencing day.
- (12) Section 49 does not apply in relation to a prescribed dependant who recovered the damages referred to in that section before the commencing day.

124A Northern Territory to reimburse Comcare for certain compensation payments and administrative expenses

- (1) The Northern Territory must reimburse Comcare for the amount of any payments of compensation made by Comcare under this Act in relation to a claim in respect of an injury, loss or damage suffered by a person if:
 - (a) the person suffered the injury, loss or damage on or after 1 July 1978 and before 1 January 1987; and
 - (b) the Northern Territory would have been liable to pay compensation in relation to the claim under section 7A or 7B of the *Compensation (Commonwealth Government Employees) Act 1971*, had that Act not been repealed.
- (2) The Northern Territory must reimburse Comcare for the administrative expenses incurred by Comcare in managing claims referred to in subsection (1).

125 Payments under previous Acts

- (1) Any payment made before the commencing day in respect of a liability of the Commonwealth, or of a Commonwealth authority, under the 1912 Act, the 1930 Act or the 1971 Act for an injury suffered by an employee shall, on and after that day, be deemed to have been made by the relevant authority in respect of the corresponding liability of that relevant authority to make such a payment under this Act for that injury.

- (2) Without limiting the generality of subsection (1), any payment referred to in that subsection that had effect as a redemption of a liability of the Commonwealth, or of a Commonwealth authority, referred to in that subsection, has effect as a redemption under section 30 of the corresponding liability of the relevant authority under this Act.

126 Notices, claims etc. under previous Acts

- (1) A notice duly served before the commencing day under:
- (a) section 5 of the 1912 Act;
 - (b) section 16 of the 1930 Act; or
 - (c) section 53 of the 1971 Act;
- in relation to an accident or an injury, loss or damage suffered by an employee shall be taken to be a notice duly given to the relevant authority under section 53 of this Act in relation to the accident, injury, loss or damage.
- (2) A claim for compensation duly made before the commencing day under the 1971 Act shall be taken to be a claim for compensation duly made to the relevant authority under this Act.
- (3) Where a requirement was made under subsection 58(1) of the 1971 Act that an employee submit himself or herself for examination by a medical referee or other legally qualified medical practitioner but the requirement had not been complied with before the commencing day, the requirement continues to have effect as if it had been made by the relevant authority under subsection 57(1) of this Act and the medical referee or medical practitioner were a medical practitioner nominated under that subsection.
- (4) An election made by an employee under section 103 of the 1971 Act shall:
- (a) in the case of an election to receive benefits under a determination referred to in that section—be taken to be an election under section 52 of this Act to receive benefits under that determination; or

Section 127

- (b) in the case of an election to receive compensation under that Act—be taken to be an election made under section 52 of this Act to receive compensation under this Act.
- (5) A notice given to a person under section 102 of the 1971 Act shall, on and after the commencing day, be taken to be a notice given by the relevant authority to that person under section 51 of this Act.

127 Settlements and determinations under previous Acts

- (1) Any settlement, whether by agreement, arbitration or judicial decision, under the 1912 Act and in force immediately before the commencing day, being a settlement of the liability of the Commonwealth, or of a Commonwealth authority, to pay compensation or make any other payment under that Act in respect of an injury shall, on and after that day, be taken to be a determination made by the relevant authority under this Act in respect of the corresponding liability of the relevant authority to pay compensation or make a similar payment under this Act in respect of that injury, but Part VI does not apply in relation to that settlement.
- (2) Any determination made or action taken by the Commissioner for Employees' Compensation under the 1930 Act or the 1971 Act and having effect immediately before the commencing day, being a determination or action in respect of the liability of the Commonwealth to pay compensation or make any other payment to a person under the 1930 Act or the 1971 Act, as the case may be, shall be taken to be a determination made by the relevant authority under this Act in respect of the corresponding liability of that relevant authority to pay compensation or make a similar payment under this Act to that person.
- (3) Where a determination or action referred to in subsection (2) is, or has been, varied by a court or a tribunal, subsection (2) has effect in relation to that determination or action as so varied.

128 Liability under previous Acts

Any liability of the Commonwealth, or of a Commonwealth authority, to pay compensation or make any other payment to a person under any provision of the 1912 Act, the 1930 Act or the 1971 Act shall, to the extent that it had not been discharged before the commencing day, be taken to have been incurred by the relevant authority on that day under the corresponding provision of this Act.

128A Comcare's liability to be discharged by prescribed Commonwealth authorities in some cases

- (1) In spite of anything in this Act, an amount that Comcare is liable to pay under this Act in respect of any injury, loss or damage suffered before 1 July 1989 (whether or not suffered before the commencing day) by an employee of a prescribed Commonwealth authority must be paid by the authority and any such payment operates, to the extent of the payment, as a discharge of Comcare's liability.
- (2) An action or proceeding does not lie against Comcare for recovery of an amount mentioned in subsection (1), but such an action or proceeding may be brought against the prescribed Commonwealth authority concerned.
- (3) Nothing in this Act requires the Commission to prepare an estimate in relation to a prescribed Commonwealth authority for any period before the financial year starting on 1 July 1989.
- (4) In this section:

prescribed Commonwealth authority means any of the following authorities, however subsequently named, constituted or established, or any person or body that becomes liable to discharge the liabilities of such an authority:

- (a) Aboriginal Hostels Limited;
- (b) A.C.T. Electricity and Water;
- (c) Army and Airforce Canteen Service;

Section 129

- (d) Australian Airlines Limited;
- (f) Australian Dried Fruits Corporation;
- (g) Australian Honey Board;
- (i) Australian Meat and Livestock Corporation;
- (k) Australian National University;
- (n) Australian Shipping Commission;
- (p) Australian Tobacco Board;
- (q) Australian Wheat Board;
- (r) Wine Australia Corporation;
- (s) Australian Wool Corporation;
- (t) Central Land Council;
- (u) Civil Aviation Authority;
- (v) Commonwealth Banking Corporation;
- (w) Commonwealth Serum Laboratories Commission;
- (x) Coselco Insurance Pty Ltd;
- (y) Coselco Mimotopes Pty Ltd;
- (z) Federal Airports Corporation;
- (zb) Housing Loans Insurance Corporation;
- (zc) National Exhibition Centre Trust;
- (zd) Northern Land Council;
- (ze) Snowy Mountains Engineering Corporation;
- (zg) Superannuation Fund Investment Trust;
- (zh) Telstra Corporation Limited;
- (zi) The Pipeline Authority;
- (zj) Reserve Bank of Australia.

129 Application for review and other proceedings under previous Acts

- (1) Where a person was, immediately before the commencing day, entitled to apply to the Administrative Appeals Tribunal for review of a determination under the 1971 Act but had not made such an application before that day, Part VI of this Act applies as if:
 - (a) the person were a claimant under this Act; and

- (aa) the determination were a determination by Comcare within the meaning of Part VI of this Act; and
 - (b) the reference in subsection 62(3) to 30 days after the day on which the determination first came to the notice of the claimant were a reference to 30 days after the commencing day.
- (2) Where the Commonwealth is a party to any proceedings relating to any matter arising under the 1912 Act, the 1930 Act or the 1971 Act (including proceedings under Part V of the 1971 Act), being proceedings instituted but not completed before the commencing day, those proceedings may be continued on and after that day and, where the proceedings are so continued, the relevant authority and the Commonwealth shall be parties to those proceedings.
- (3) Where proceedings under Part V of the 1971 Act in relation to a determination are continued under subsection (2), Part VI of this Act applies to the proceedings as if the determination were a reviewable decision by Comcare within the meaning of Part VI of this Act.

129A Reconsideration and review of certain determinations under 1971 Act

- (1) Comcare may, on its own motion, reconsider under section 62 of this Act a determination under the 1971 Act having effect immediately before the commencing day but not covered by subsection 129(1) and, for that purpose, section 62 of this Act applies as if:
- (a) the person in respect of whom the determination was made were a claimant under this Act; and
 - (b) the determination were a determination by Comcare within the meaning of Part VI of this Act.
- (2) Part VI of this Act applies to a decision of Comcare on a reconsideration of a determination mentioned in subsection (1) as if the decision were a reviewable decision by Comcare within the meaning of that Part.

130 Money and investments held under 1971 Act

All money and investments held immediately before the commencing day for the benefit of a person or persons by the Commissioner for Employees' Compensation under the 1971 Act are, by force of this section, vested in the relevant authority and shall be held by that authority for the benefit of that person or those persons, as the case may be.

Division 3—Special transitional provisions relating to certain former employees

131 Former employees under 65 who are in receipt of superannuation benefits and are unable to engage in any work

- (1) This section applies to a former employee who:
 - (a) on the commencing day, was under 65 and in receipt of a pension under a superannuation scheme; and
 - (b) is not capable of engaging in any work.
- (2) Subject to this Division, if the former employee's total benefit immediately before the commencing day was equal to or more than 95% of his or her normal weekly earnings as at that day, the amount of compensation payable per week to the former employee under this Act is the amount that, when added to the former employee's superannuation amount, results in a combined benefit equal to 95% of those normal weekly earnings.
- (2A) If, as a result of an increase in the amount of a former employee's normal weekly earnings, the amount of combined benefit payable to the former employee under subsection (2) is less than 70% of those increased normal weekly earnings, the amount of compensation must be increased or further increased (as the case may be) until it is equal to 70% of those increased normal weekly earnings.
- (3) Subject to this Division, if the former employee's total benefit immediately before the commencing day was equal to or more than 70%, but less than 95%, of his or her normal weekly earnings as at that day, the amount of compensation payable per week to the former employee under this Act is an amount equal to the employee's 1971 amount.

Section 132

- (3A) If, as a result of an increase in the amount of a former employee's normal weekly earnings, the amount of compensation payable to the former employee under subsection (3) is less than 70% of those increased normal weekly earnings, the amount of compensation must be increased or further increased (as the case may be) until it is equal to 70% of those increased normal weekly earnings.
- (4) Subject to this Division, if the former employee's total benefit immediately before the commencing day was less than 70% of his or her normal weekly earnings as at that day, the amount of compensation payable per week to the former employee under this Act is the amount that, when added to the former employee's superannuation amount, results in a combined benefit equal to 70% of his or her normal weekly earnings for the time being.
- (5) Whenever the superannuation amount of a former employee referred to in subsection (2), (3) or (4) is increased, the amount of compensation payable under that subsection shall be reduced, or further reduced, as the case requires, by:
- (a) an amount equal to the amount of the increase; or
 - (b) an amount that will result in a combined benefit equal to 70% of the former employee's normal weekly earnings as at the date of the increase;
- whichever is less.
- (6) Subsection (5) does not require a reduction or further reduction in the amount of compensation payable to a former employee under subsection (2), (3) or (4) where the reduction or further reduction would result in a combined benefit of less than 70% of the employee's normal weekly earnings as at the date of the increase in the superannuation amount.

132 Former employees under 65 who are not in receipt of superannuation benefits and are unable to engage in any work

- (1) This section applies to a former employee who:
- (a) on the commencing day, was under 65 and not in receipt of a pension under a superannuation scheme; and

- (b) is not capable of engaging in any work.
- (2) Subject to this Division, if the former employee's 1971 amount was equal to or more than 95% of his or her normal weekly earnings as at the commencing day, the amount of compensation payable per week to the former employee under this Act is an amount equal to 95% of those normal weekly earnings.
- (3) Subject to this Division, if the former employee's 1971 amount was equal to or more than 70%, but less than 95%, of his or her normal weekly earnings as at the commencing day, the amount of compensation payable per week to the former employee under this Act is an amount equal to the 1971 amount.
- (4) Subject to this Division, if the former employee's 1971 amount was less than 70% of his or her normal weekly earnings as at the commencing day, the amount of compensation payable per week to the former employee under this Act is an amount equal to 70% of those normal weekly earnings.
- (5) Where, as a result of an increase in the amount of a former employee's normal weekly earnings, the amount of compensation payable to the former employee under subsection (2), (3) or (4) is less than 70% of those increased normal weekly earnings, that amount of compensation shall be increased, or further increased, as the case requires, until it is equal to 70% of those increased normal weekly earnings.

132A Former employees under 65 who are capable of engaging in any work

- (1) This section applies to a former employee who:
- (a) on the commencing day, was under 65; and
 - (b) is capable of engaging in any work.
- (2) Where a person to whom this section applies was in receipt of a pension under a superannuation scheme on the commencing day, then, subject to this Division, the amount of compensation payable per week to the former employee is:

Part X Transitional provisions

Division 3 Special transitional provisions relating to certain former employees

Section 132A

- (a) the amount of compensation per week that would have been payable under section 131 if that section had applied to the former employee, less an amount that is the greater of the following amounts:
 - (i) the amount per week (if any) that the employee is able to earn in suitable employment;
 - (ii) the amount per week (if any) that the employee earns from any employment (including self-employment) that is undertaken by the employee during that week; or
 - (b) the amount of compensation per week that would have been payable under section 20 if that section had applied to the former employee;
- whichever is greater.
- (3) Where a person to whom this section applies was not in receipt of a pension under a superannuation scheme on the commencing day, then, subject to this Division, the amount of compensation payable per week to the former employee is:
 - (a) the amount of compensation per week that would have been payable under section 132 if that section had applied to the former employee, less an amount that is the greater of the following amounts:
 - (i) the amount per week (if any) that the employee is able to earn in suitable employment;
 - (ii) the amount per week (if any) that the employee earns from any employment (including self-employment) that is undertaken by the employee during that week; or
 - (b) the amount of compensation per week that would have been payable under section 19 if that section had applied to the former employee, less an amount equal to 5% of his or her normal weekly earnings;

whichever is greater.
 - (4) In determining, for the purposes of this section, the amount per week a former employee is able to earn in suitable employment, Comcare must have regard to the factors mentioned in paragraphs 19(4)(a), (b), (c), (d), (e), (f) and (g) as if those paragraphs referred to the former employee.

133 Minimum benefit payable

- (1) Where:
- (a) the amount of combined benefit that would, but for this section, be payable to a former employee under section 131;
or
 - (b) the amount of compensation that would, but for this section, be payable to a former employee under section 132;
- is less than the minimum earnings, that amount of combined benefit or compensation, as the case may be, shall be increased by an amount equal to the difference between that amount and the minimum earnings.

- (2) In this section:

minimum earnings, in relation to a former employee, has the same meaning as that expression has in relation to employees under section 19.

134 Reduction of compensation on reaching pension age

- (1) When a former employee to whom section 131, 132 or 132A applies reaches pension age, the amount of compensation payable per week to the former employee but for this section must be reduced by an amount calculated under the formula:

$$\frac{5 \times (\text{Pension age} - \text{Age as at commencing day})}{100} \times \text{Amount of weekly compensation}$$

where:

age as at commencing day means the age of the former employee, expressed in completed years, as at the commencing day.

amount of weekly compensation means that amount of compensation payable per week to the former employee.

- (2) Neither section 8 nor section 13 applies to the amount of compensation payable to an employee from time to time in accordance with subsection (1).

Section 135

135 Former employees 65 and over who are in receipt of superannuation benefits

- (1) This section applies in relation to a former employee who, on the commencing day, is at least 65 and is in receipt of a pension under a superannuation scheme.
- (2) The amount of compensation payable per week to the former employee under this Act is an amount equal to the employee's 1971 amount.

136 Former employees 65 and over who are not in receipt of superannuation benefits

- (1) This section applies in relation to a former employee who, on the commencing day, is at least 65 and is not in receipt of a pension under a superannuation scheme.
- (2) The amount of compensation payable per week to the former employee under this Act is an amount equal to the employee's 1971 amount.

137 Redemption on request by former employee

- (1) If:
 - (a) a relevant authority is liable to make weekly payments of compensation to a former employee in respect of an injury resulting in an incapacity; and
 - (b) the amount of those payments is \$62.99 per week or less; and
 - (c) the relevant authority is satisfied that the degree of the former employee's incapacity is unlikely to change;the relevant authority must, on written request by the former employee, make a determination that its liability to make further payments to the former employee be redeemed by the payment to the former employee of a lump sum.
- (2) The amount of the lump sum is the sum of:
 - (a) the amount worked out using the formula in subsection (3); and

(b) the amount worked out using the formula in subsection (4).

(3) The formula for the purposes of paragraph (2)(a) is:

$$\frac{52 \times \text{Amount per week} \times \left[(\text{Specified number} + 1)^n - 1 \right]}{\text{Specified number} \times \left[(\text{Specified number} + 1)^n \right]}$$

(4) The formula for the purposes of paragraph (2)(b) is:

$$\frac{52 \times \text{Reduced amount per week} \times \left[(\text{Specified number} + 1)^l - 1 \right]}{\text{Specified number} \times \left[(\text{Specified number} + 1)^l \right]}$$

(5) For the purposes of this section:

amount per week means the amount of compensation per week payable to the former employee.

specified number means the number specified by the Minister for the purposes of subsection 30(2).

n means the number worked out using the formula:

$$\frac{\text{Number of days}}{365}$$

where:

number of days means the number of days in the period beginning on the day after the day on which the determination is made and ending on the day immediately before the day on which the employee reaches pension age.

reduced amount per week means the amount per week less the amount calculated under the formula in section 134.

l means the number worked out in using the formula:

$$\text{Expectation of life} - (65 - \text{Age})$$

Part X Transitional provisions

Division 3 Special transitional provisions relating to certain former employees

Section 137

expectation of life means the number of years in the complete expectation of life of the former employee at the date of the determination, as ascertained by reference to the latest Australian Life Tables published by the Australian Statistician.

age means the number of completed years in the age of the former employee at the date of the determination.

Part XI—Operation of this Act in relation to certain defence-related injuries and deaths etc.

Division 1—Preliminary

140 Simplified outline of this Part

This Part confers on the Military Rehabilitation and Compensation Commission the functions:

- (a) of determining and managing claims under this Act that relate to defence service that occurred before the MRCA commencement date; and
- (b) of managing the provision of compensation and rehabilitation provided as a result of the making of claims of that kind.

This Part also modifies the operation of this Act in relation to the Safety, Rehabilitation and Compensation Commission and in relation to the liabilities of Comcare and the Commonwealth for members of the Defence Force.

141 Definitions

In this Part:

Defence Force has the meaning given by the MRCA.

defence-related claim means a claim under this Act made before or after the MRCA commencement date (including a claim made but not determined before that date) in respect of an injury, loss, damage or death:

- (a) to which the MRCA does not apply; and

Part XI Operation of this Act in relation to certain defence-related injuries and deaths etc.

Division 1 Preliminary

Section 141

(b) that relates to defence service that occurred before the MRCA commencement date.

Note 1: For injuries, diseases and deaths to which the MRCA applies, see Parts 2 and 3 of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*.

Note 2: Rehabilitation may be provided following a defence-related claim in respect of an injury.

defence service has the meaning given by the MRCA.

MRCC means the Military Rehabilitation and Compensation Commission established by section 361 of the MRCA.

Veterans' Affairs Department means the Department of State that deals with veterans' affairs and that is administered by the Veterans' Affairs Minister.

Veterans' Affairs Minister has the meaning given by the MRCA.

Division 2—Management of defence-related claims

142 Functions of MRCC

- (1) The functions of the MRCC include:
 - (a) determining defence-related claims under this Act accurately and quickly; and
 - (b) arranging the payment of compensation, and the provision of rehabilitation or treatment (including treatment provided under the MRCA or the *Veterans' Entitlements Act 1986*), as a result of the making of defence-related claims; and
 - (c) maintaining contact with the Safety, Rehabilitation and Compensation Commission and with Comcare to ensure that, as far as practicable, there is equity of outcomes resulting from administrative practices and procedures used by Comcare and the MRCC in the performance of their respective functions; and
 - (d) doing anything the doing of which:
 - (i) is incidental to the performance of the function referred to in paragraph (a) or (b); and
 - (ii) would be required of Comcare if Comcare had responsibility for the performance of that function.
- (2) In performing the function referred to in paragraph (1)(a), the MRCC:
 - (a) is to be guided by equity, good conscience and the substantial merits of the case, without regard to technicalities; and
 - (b) is not required to conduct a hearing; and
 - (c) is not bound by the rules of evidence.
- (3) The performance by the MRCC of the functions referred to in subsection (1) is subject to the condition that the MRCC will not cause or permit to be made on its behalf to a court or tribunal a submission that Comcare or the Commission has requested not be made.

Part XI Operation of this Act in relation to certain defence-related injuries and deaths etc.

Division 2 Management of defence-related claims

Section 143

- (4) The MRCC has power to do all things necessary or convenient to be done for, or in connection with, the performance of functions conferred by subsection (1).
- (5) Paragraph 89B(a) has effect as if there were included in that paragraph a reference to the administrative practices and procedures used by the MRCC in the performance of its functions under this Part.

143 Giving copies of defence-related claims etc.

- (1) The MRCC must give a copy of a defence-related claim made by or in respect of an employee to the Chief of the Defence Force if the employee was a member of the Defence Force at the time when the relevant injury or accident occurred or the relevant disease was contracted.
- (2) Comcare must give a copy of each defence-related claim made before the MRCA commencement date but not determined before that date, and a copy of any other document it has that is relevant to that claim, to the MRCC.
- (3) Comcare must also give to the MRCC a copy of each notice given to Comcare under section 53 before the MRCA commencement date if the notice relates to an injury, loss or damage for which a defence-related claim might be made.
- (4) Subsection 54(4) does not apply to:
 - (a) a defence-related claim made on or after the MRCA commencement date; or
 - (b) a defence-related claim made before the MRCA commencement date but not determined before that date.

144 Provisions relating to management of claims etc.

- (1) For a defence-related claim made before the MRCA commencement date:
 - (a) a determination made by Comcare that is in force immediately before that date is taken, after that date, to have

- been a determination made by the MRCC in relation to that claim; and
- (b) any other thing done by Comcare that is in force immediately before the MRCA commencement date is taken, after that date, to have been done by the MRCC in relation to that claim.
- (2) For any defence-related claim:
- (a) a notice or claim given or made under Part V after the MRCA commencement date is to be given or made to the MRCC; and
- (b) a notice or claim given or made under Part V to Comcare and in force immediately before the MRCA commencement date continues in force, after that date, as if it had been given or made to the MRCC.
- (3) If, for a defence-related claim:
- (a) any proceedings (including proceedings under Part VI) to which Comcare is a party are brought in relation to a determination made, or thing done, by Comcare before the MRCA commencement date; and
- (b) those proceedings have not been concluded before that date; those proceedings may be continued on or after that date. For the purpose of the proceedings as so continued, the MRCC replaces Comcare as a party to the proceedings.
- (4) If, on or after the MRCA commencement date:
- (a) a determination made or other thing done by Comcare is treated under subsection (1) as having been made or done by the MRCC; or
- (b) a notice or claim given or made under Part V to Comcare is treated under subsection (2) as if it had been given or made to the MRCC; or
- (c) proceedings (including proceedings under Part VI) to which Comcare is a party are treated under subsection (3) as proceedings to which the MRCC is a party;

Part XI Operation of this Act in relation to certain defence-related injuries and deaths etc.

Division 2 Management of defence-related claims

Section 144

Comcare must inform the MRCC, as soon as practicable, of that determination made or other thing done, of that notice or claim, or of those proceedings.

- (5) If, under subsection (3), the MRCC replaces Comcare as a party to proceedings, the court or tribunal before which the proceedings have been brought must, on application by Comcare, join Comcare as a party to the proceedings.
- (6) Any proceedings (including proceedings under Part VI) that may be brought:
 - (a) in relation to a determination made, or taken to have been made, by the MRCC in managing such a claim; or
 - (b) in relation to any thing done, or taken to have been done, by the MRCC in managing such a claim;must be brought against the MRCC.
- (7) If proceedings are brought against the MRCC in accordance with subsection (6):
 - (a) the MRCC must inform Comcare as soon as practicable that the proceedings have been brought; and
 - (b) the court or tribunal before which the proceedings have been brought must, on application by Comcare, join Comcare as a party to the proceedings.
- (8) An application by Comcare under subsection (5) or (7):
 - (a) may be made by filing a notice in the registry of the court or tribunal concerned; and
 - (b) must be notified to the other parties to the proceeding by serving on them a copy of the notice so filed.
- (9) A decision in proceedings referred to in subsection (3) or (6) is binding on the MRCC and on Comcare, whether or not Comcare is joined as a party to the proceedings.
- (10) For proceedings referred to in this section:
 - (a) in which the MRCC replaces Comcare as a party; or
 - (b) brought against the MRCC;

the Commonwealth is liable to pay any amounts for which the MRCC would otherwise be liable.

Part XI Operation of this Act in relation to certain defence-related injuries and deaths etc.

Division 2A Treatment of certain defence-related injuries

Section 144A

Division 2A—Treatment of certain defence-related injuries

144A Persons entitled to treatment for any injury under the MRCA or the *Veterans' Entitlements Act 1986* not entitled to certain compensation

- (1) The MRCC is not liable, under subsection 16(1) of this Act, to pay compensation in respect of the cost of medical treatment obtained in relation to an injury of an employee if the employee is:
 - (a) entitled to be provided with treatment under section 281 or 282 of the MRCA for any injury or disease (within the meaning of that Act); or
 - (b) eligible for treatment under section 53D or subsection 85(3), (4), (4A), (4B), (5), (7) or (7A) of the *Veterans' Entitlements Act 1986* for any injury or disease (within the meaning of that Act).

Note: In this Act, the definition of *injury* includes a disease (see section 5A of this Act).

Exceptional circumstances determination

- (2) However, if the MRCC is satisfied that there are exceptional circumstances, the MRCC may determine, in writing, that on and from a specified day subsection (1) of this section does not apply in relation to an employee and an injury.
- (3) The MRCC must notify the employee of the determination within 7 days of the determination being made.
- (4) A determination under subsection (2) is not a legislative instrument.

144B Treatment of certain defence-related injuries to be provided under the MRCA or the *Veterans' Entitlements Act 1986*

- (1) This section applies in relation to an employee and an injury (the *SRCA injury*) if:

- (a) a defence-related claim for compensation is made in respect of the SRCA injury by or in respect of the employee; and
- (b) the MRCC accepts liability to pay compensation for the SRCA injury; and
- (c) any of the following applies:
 - (i) between 1 January 2012 and 9 December 2013, the MRCC is liable to pay compensation under subsection 16(1) in respect of the cost of medical treatment obtained in relation to the SRCA injury;
 - (ii) the MRCC accepts liability to pay compensation for the SRCA injury, as referred to in paragraph (b) of this subsection, on or after 10 December 2013;
 - (iii) the MRCC determines, under subsection (2), that this section applies in relation to the employee and the SRCA injury.

Note: The MRCC may also determine that subparagraph (1)(c)(i) or (ii) does not apply (see section 144C).

- (2) The MRCC may determine, in writing, that this section applies in relation to an employee and an SRCA injury on and from a specified day if:
 - (a) the MRCC accepted liability to pay compensation for the SRCA injury on or before 9 December 2013, as referred to in paragraph (1)(b); and
 - (b) between 1 January 2012 and 9 December 2013, the MRCC was not liable to pay compensation under subsection 16(1) in respect of the cost of medical treatment in relation to the SRCA injury because no treatment was obtained in relation to that injury.

Treatment of certain defence-related injuries to be provided under MRCA or Veterans' Entitlements Act 1986

- (3) The following table has effect in relation to an employee and an SRCA injury to which this section applies.

Part XI Operation of this Act in relation to certain defence-related injuries and deaths etc.

Division 2A Treatment of certain defence-related injuries

Section 144B

Treatment to be provided under the MRCA or the *Veterans' Entitlements Act 1986*

Item	If this condition is met ...	then ...
1	The employee is not entitled or eligible to be provided with treatment under the MRCA or the <i>Veterans' Entitlements Act 1986</i> for any injury or disease (within the meaning of those Acts)	Section 280A of the MRCA applies to the employee and the SRCA injury
2	The employee is entitled to be provided with treatment under section 279 or 280 of the MRCA for another injury or disease (within the meaning of that Act), but not the SRCA injury	Section 280A of the MRCA applies to the employee and the SRCA injury
3	The employee is eligible to be provided with treatment under subsection 85(1) or (2) of the <i>Veterans' Entitlements Act 1986</i> (but not under section 279 or 280 of the MRCA) for another injury or disease (within the meaning of the <i>Veterans' Entitlements Act 1986</i>), but not the SRCA injury	Subsection 85(2A) of the <i>Veterans' Entitlements Act 1986</i> applies to the employee and the SRCA injury

Note 1: The employee is entitled to be provided with treatment under the MRCA or the *Veterans' Entitlements Act 1986* if section 280A of the MRCA or subsection 85(2A) of the *Veterans' Entitlements Act 1986* applies to the employee and the SRCA injury.

Note 2: This subsection is subject to section 144C.

Note 3: In this Act, the definition of *injury* includes a disease (see section 5A of this Act).

- (4) The employee is entitled to be provided with treatment as a result of the table in subsection (3) on and after:
- (a) if subparagraph (1)(c)(i) applies—10 December 2013; or
 - (b) if subparagraph (1)(c)(ii) applies—the day the MRCC accepts liability; or

- (c) if subparagraph (1)(c)(iii) applies—the day specified in the determination.

No entitlement to compensation under this Act

- (5) The employee is not entitled to compensation under subsection 16(1) in respect of the cost of medical treatment obtained in relation to the SRCA injury if, as a result of the table in subsection (3) of this section, the employee is entitled or eligible to be provided with treatment under the MRCA or the *Veterans' Entitlements Act 1986* for the injury.

Entitlement to travel expenses under this Act

- (6) Subsections 16(6) to (8) of this Act apply in relation to treatment provided, as a result of the table in subsection (3) of this section, under the MRCA or the *Veterans' Entitlements Act 1986* for an injury as if that treatment was medical treatment referred to in subsections 16(6) to (8) of this Act in relation to which compensation is payable.

Determination not legislative instrument

- (7) A determination under subsection (2) is not a legislative instrument.

144C Exceptional circumstances determination

- (1) If the MRCC is satisfied that there are exceptional circumstances, the MRCC may determine, in writing, that on and from a specified day subparagraph 144B(1)(c)(i) or (ii) does not apply in relation to an employee and an injury.
- (2) The MRCC must notify the employee of the determination within 7 days of the determination being made.

Determination not legislative instrument

- (3) A determination under subsection (1) is not a legislative instrument.

Part XI Operation of this Act in relation to certain defence-related injuries and deaths etc.

Division 3 Administrative matters

Section 145

Division 3—Administrative matters

145 Relevant authority

- (1) This Act applies in relation to an employee by whom or in respect of whom a defence-related claim has been made, and in relation to dependants of the employee, as if the MRCC were the relevant authority in relation to the employee for that claim.
- (2) However, for defence-related claims, this Act has effect as if references in this Act to a relevant authority, in relation to liability to pay an amount, in relation to a debt being due or in relation to the receipt of an amount, were references to the Commonwealth.

146 Rehabilitation authority etc.

- (1) This Act applies to the employee in relation to a defence-related claim as if the rehabilitation authority in relation to the employee were the rehabilitation authority applicable under subsection 39(3) of the MRCA.
- (2) Section 40 of the MRCA (rules where rehabilitation authority changes) applies for the purposes of the application of this Act to the employee in relation to a defence-related claim.
- (3) The duty under section 40 to take steps to provide suitable employment, or to assist in finding suitable employment, for a person who is undertaking, or has completed, a rehabilitation program must be performed by the person's rehabilitation authority rather than the Commonwealth.

147 References to Comcare etc.

- (1) For the purposes of applying this Act to defence-related claims and matters arising out of those claims:
 - (a) Part II applies as if references in that Part to Comcare (except references in section 28 and references covered by paragraph (b)) were references to the MRCC; and

Section 147

- (b) this Act applies as if references in this Act to Comcare, in relation to liability to pay an amount, in relation to a debt being due or in relation to the receipt of an amount, were references to the Commonwealth; and
- (c) this Act applies as if another reference in this Act to Comcare (other than in Division 2 of Part III, section 41 or Part VI, VII or VIII) were, unless the contrary intention appears, a reference to the MRCC.
- (2) In addition, this Act applies to defence-related claims and matters arising out of those claims with the modifications specified in this table:

Modifications of this Act		
Item	Provision	Modification
1	Paragraph 48(8)(a)	The paragraph does not apply
2	Section 52A	The section does not apply
3	Subsection 111(2)	The reference to a relevant authority has effect as a reference to the Commonwealth
4	Subsections 111(2A), (3) and (4)	The subsections do not apply
5	Sections 112 and 113	References to a relevant authority have effect as references to the Commonwealth
6	Paragraph 114B(1)(c)	The paragraph applies as if it read: (c) the MRCC is of the opinion that the retired employee may have been paid, or might be paid, amounts of compensation under this Act in excess of the amounts that he or she was entitled to receive because of section 20, 21 or 21A;
7	Paragraph 114B(2)(a)	The paragraph applies as if it read: (a) stating that the retired employee may receive, or may have received, an overpayment of compensation; and
8	Section 121A	The section does not apply

Part XI Operation of this Act in relation to certain defence-related injuries and deaths etc.

Division 3 Administrative matters

Section 148

148 Rehabilitation programs

- (1) Despite section 37, the MRCC or the Chief of the Defence Force as the rehabilitation authority for an employee in relation to a defence-related claim may make arrangements for the provision of a rehabilitation program for the employee by:
 - (a) an approved program provider; or
 - (b) a person nominated in writing by the MRCC or the Chief of the Defence Force, being a person the MRCC or Chief of the Defence Force is satisfied has appropriate skills and expertise to design and provide rehabilitation programs.
- (2) Before nominating a person under paragraph (1)(b), the MRCC or Chief of the Defence Force must consult with Comcare about the proposed nomination.

149 Directions by Minister

- (1) The Minister may, by notice in writing given to the Chair of the MRCC, give a direction to the MRCC with respect to the performance of its functions or the exercise of its powers under this Act, otherwise than in relation to a particular case.
- (2) The MRCC must comply with a direction given under subsection (1).

150 Guidelines by Commission

- (1) The Commission may, by legislative instrument, make general policy guidelines in relation to the operation of this Part.
- (2) The Commission must not make guidelines that are inconsistent with:
 - (a) any directions under section 149 of this Act; and
 - (b) any directions given to Comcare under section 73 of this Act in relation to the performance of its functions or the exercise of its powers under the *Work Health and Safety Act 2011*.

- (3) Any guidelines that are inconsistent with a direction referred to in subsection (2) have no effect to the extent of the inconsistency.
- (4) The MRCC must comply with any guidelines made under subsection (1).

151 Obtaining information

- (1) The MRCC may, by notice in writing, require:
 - (a) the Secretary of the Defence Department; or
 - (b) the Secretary of the Veterans' Affairs Department; or
 - (ba) the Chief of the Defence Force;to give the MRCC, within the period specified in the notice, the documents or information (or both) specified in the notice, being documents or information in the possession, custody or control of that person that are relevant to a defence-related claim.
- (2) A person to whom a notice is given must comply with the notice without delay.

151A Giving information

- (1) The MRCC (or a staff member assisting the MRCC) may provide any information obtained in the performance of duties under this Act to any of the following persons for the purposes of the relevant Department or of Centrelink or Medicare (as the case requires):
 - (a) the Secretary of the Department administered by the Minister who administers the *National Health Act 1953*;
 - (b) the Secretary of the Department administered by the Minister who administers the *Aged Care Act 1997*;
 - (c) the Secretary of the Department administered by the Minister who administers the *Human Services (Centrelink) Act 1997*;
 - (d) the Chief Executive Centrelink (within the meaning of the *Human Services (Centrelink) Act 1997*);
 - (e) the Chief Executive Medicare (within the meaning of the *Human Services (Medicare) Act 1973*).
- (2) The Secretary or Chief Executive must not:

Part XI Operation of this Act in relation to certain defence-related injuries and deaths etc.

Division 3 Administrative matters

Section 152

- (a) use the information for a purpose other than those purposes;
or
 - (b) further disclose the information for a purpose other than those purposes.
- (3) To avoid doubt, information that is used or disclosed in accordance with this section is taken, for the purposes of the *Privacy Act 1988*, to be authorised by law.

152 Delegation

- (1) The MRCC may, by resolution, delegate any of its functions or powers under a provision of this Act to a person to whom it can, under section 384 of the MRCA, delegate functions or powers under that Act.
- (2) The Chief of the Defence Force may, in writing, delegate any of his or her functions or powers under a provision of this Act to a person to whom the Chief of the Defence Force can delegate functions or powers under section 438 of the MRCA.

153 Holding money on trust for person under a legal disability

- (1) The MRCC may establish trust funds for the purposes of section 110.
- (2) Comcare must pay to the credit of a trust fund established under subsection (1) any money that it holds for the benefit of a person referred to in section 110 as a result of a defence-related claim.

154 Settlements and determinations etc. under the 1912 Act, the 1930 Act or the 1971 Act

- (1) Subsection (2) applies to a settlement that:
 - (a) under subsection 127(1), is taken to be a determination made by the relevant authority under this Act; and
 - (b) is in force immediately before the MRCA commencement date; and

- (c) concerns an injury that relates to defence service.
- (2) On and after the MRCA commencement date, the settlement is taken to be a determination made by the MRCC under this Act in respect of the corresponding liability of the Commonwealth to pay compensation or make a similar payment under this Part in respect of that injury, but Part VI does not apply in relation to that settlement.
- (3) Subsection (4) applies to a determination made or action taken that:
- (a) under subsection 127(2), is taken to be a determination made by the relevant authority under this Act; and
 - (b) is in force immediately before the MRCA commencement date; and
 - (c) concerns compensation or a payment that relates to defence service.
- (4) On and after the MRCA commencement date, the determination or action is taken to be a determination made or action taken by the MRCC under this Act in respect of the corresponding liability of the Commonwealth to pay compensation or make a similar payment under this Part.
- (5) If a determination or action referred to in subsection (3) is, or has been, varied by a court or a tribunal, subsection (4) has effect in relation to that determination or action as so varied.

Part XI Operation of this Act in relation to certain defence-related injuries and deaths etc.

Division 4 Reconsideration and review

Section 155

Division 4—Reconsideration and review

155 Reconsideration and review

- (1) The MRCC is a party to proceedings instituted under Part VI in relation to a determination affecting a defence-related claim.
- (2) For the purposes of subsection 60(2), the MRCC is the body responsible for a reviewable decision in relation to a defence-related claim.
- (3) The MRCC is a responsible authority for the purposes of section 67 in relation to a determination affecting a defence-related claim. However, any costs for which the MRCC would be responsible under that section are to be paid by the Commonwealth.

Division 5—Modifications relating to Comcare and Defence Department for employees who are engaged in defence service

156 Liabilities of Comcare and the Commission with respect to defence service

Neither Comcare nor the Commission has any liability under this Act in respect of an injury, loss, damage or death that relates to defence service (whenever it occurred).

157 Application of certain provisions to Defence Department

- (1) Sections 97, 97A, 97B, 97C and 97D do not apply to the Defence Department in relation to defence service on or after the MRCA commencement date.
- (2) Any payment made by the Defence Department under, or purportedly under, section 97H for a determination under section 97 or 97D in respect of defence service before the MRCA commencement date is taken to have been validly made.
- (3) Any payment made by the Defence Department under, or purportedly under, section 67H of the *Occupational Health and Safety Act 1991* in respect of defence service before the MRCA commencement date is taken to have been validly made.

158 Regulatory contributions by Defence Department

- (1) Comcare must make a determination of the regulatory contribution to be paid by the Defence Department for the financial year in which the MRCA commencement date occurs and later financial years in relation to employees engaged in defence service.
- (2) The amount of the regulatory contribution to be paid for a particular financial year under subsection (1) is the sum of:

Part XI Operation of this Act in relation to certain defence-related injuries and deaths etc.

Division 5 Modifications relating to Comcare and Defence Department for employees who are engaged in defence service

Section 159

- (a) that part of the estimated cost incurred by the Commission and Comcare in carrying out their respective functions under this Act that Comcare determines, in accordance with guidelines under section 97E, to be referable to the Defence Department in relation to defence service; and
- (b) that part of the estimated cost incurred by the Commission and Comcare in carrying out their respective functions under the *Occupational Health and Safety Act 1991*, the *Work Health and Safety Act 2011* and the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011* that Comcare determines, in accordance with those guidelines, to be referable to the Defence Department in relation to defence service.

159 Modifications of provisions relating to contributions

Sections 97E to 97P apply to the Defence Department in relation to employees engaged in defence service, but only so far as they relate to determinations under section 158.

Division 6—Appropriation

160 Appropriation

- (1) The Consolidated Revenue Fund is appropriated for the purposes of paying compensation and other amounts payable in relation to defence service under this Act.
- (2) The Consolidated Revenue Fund is appropriated for the purposes of paying for:
 - (a) treatment provided under subsection 280A(1) of the MRCA, and other services in relation to such treatment; and
 - (b) MRCA supplement that is payable because a person is entitled to treatment in accordance with that subsection.

Note: That treatment is provided to an employee in relation to a defence-related claim (see section 144B of this Act).

Part XI Operation of this Act in relation to certain defence-related injuries and deaths etc.

Division 7 Annual report

Section 161

Division 7—Annual report

161 Annual report

- (1) As soon as possible after each 30 June, the Chair of the MRCC must give the Minister, for presentation to the Parliament, a report of the MRCC's activities under this Act during the financial year that ended on that day.
- (2) A report under subsection (1) must include particulars of:
 - (a) any directions given by the Minister under section 149; and
 - (b) any guidelines issued by the Commission under section 150; during the financial year to which the report relates.