



Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001

No. 144, 2001



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**An Act to amend the *Safety, Rehabilitation and
Compensation Act 1988* and other legislation, and
for other purposes**

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
Schedule 1—Amendment of the Industrial Chemicals (Notification and Assessment) Act 1989		4
Schedule 2—Amendment of the Safety, Rehabilitation and Compensation Act 1988		17
Part 2	—Amendments relating to indexation of normal weekly earnings	17
Part 3	—Amendments relating to amount of compensation	19
Part 4	—Amendment relating to compensation for non-economic loss in relation to certain injuries	24
Part 5	—Amendments relating to payment of compensation to persons aged over 63	25
Part 6	—Amendments concerning rehabilitation program providers	27
Part 7	—Amendment relating to common law remedies for dependants of deceased employees	38
Part 8	—Amendments concerning licences to enable Commonwealth authorities and certain corporations to accept liability for, and determine, claims	39
Part 9	—Amendments concerning compensation payable for hearing loss	58
Part 10	—Amendments relating to premiums, special premiums and regulatory contributions	60
Part 12	—Other amendments	84
Schedule 3—Amendment of other Acts		88
	<i>Equal Opportunity for Women in the Workplace Act 1999</i>	88
	<i>Income Tax Assessment Act 1936</i>	88

<i>National Occupational Health and Safety Commission Act 1985</i>	88
<i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i>	89

<i>Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001</i>	No. 144, 2001	ii
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Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001

No. 144, 2001

**An Act to amend the *Safety, Rehabilitation and
Compensation Act 1988* and other legislation, and
for other purposes**

[Assented to 1 October 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Safety, Rehabilitation and
Compensation and Other Legislation Amendment Act 2001*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (2) Subject to subsections (7) and (8), items 5, 6 and 7 of Schedule 1 and the items of Parts 6 and 8 of Schedule 2 commence on a day or days to be fixed by Proclamation.
 - (3) Items 12, 13, 14, 24, 27, 28, 29, 30, 34, 44, 46, 47, 48, 55 and 57 of Schedule 1, items 90, 91 and 101 of Schedule 2, and items 2 and 6 to 11 of Schedule 3 commence 28 days after the day on which this Act receives the Royal Assent.
 - (4) Part 3 of Schedule 2 commences immediately after the end of the period of 6 months after the day on which this Act receives the Royal Assent.
 - (5) Part 10 of Schedule 2 commences on 1 July 2002.
 - (6) Part 11 of Schedule 2 commences at whichever of the following times applies:
 - (a) if Parts 4 to 10 of the Act that establishes the Administrative Review Tribunal commence before, or at the same time as, item 26 of Schedule 2 to this Act—immediately after the commencement of that item;
 - (b) if Parts 4 to 10 of the Act that establishes the Administrative Review Tribunal commence after item 26 of Schedule 2 to this Act—the time when Parts 4 to 10 of the Act that establishes the Administrative Review Tribunal commence.
- Note: The short title of the Act that establishes the Administrative Review Tribunal is either the *Administrative Review Tribunal Act 2000* or the *Administrative Review Tribunal Act 2001*.
- (7) Subject to subsection (8), if an item of this Act referred to in subsection (2) does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, that item commences on the first day after the end of that period.
 - (8) If items 47 and 48 of Schedule 2 do not commence before 1 July 2002, they are taken to have been repealed on that day.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Industrial Chemicals (Notification and Assessment) Act 1989

1 Section 5 (definition of *assessment report*)

Omit “or 68”, insert “, 68 or 68A”.

2 Section 5 (definition of *Director*)

Repeal the definition, substitute:

Director means the Director, National Industrial Chemicals Notification and Assessment Scheme, appointed under section 90.

3 Section 5

Insert:

existing chemical means an industrial chemical other than a new industrial chemical.

4 Section 5 (definition of *new synthetic polymer*)

Omit “a polymer” (wherever occurring), substitute “a synthetic polymer”.

5 Section 5

Insert:

prescribed reactant, in relation to a polyester, means a substance listed in the regulations as a prescribed reactant.

6 Section 5 (paragraph (a) of the definition of *synthetic polymer of low concern*)

Repeal the paragraph, substitute:

(a) either:

- (i) has a number average molecular weight, as defined by the regulations, that is greater than 1,000; or
- (ii) is a polyester made from prescribed reactants and whose molecules contain at least 2 carboxylic acid ester

linkages, at least one of which links internal monomer units together; and

7 Transitional provision

If, before the commencement of this item:

- (a) a person has applied for an assessment certificate in respect of a polyester that could, if the application had been made after the commencement of this item, have been assessed as a polymer of low concern; and
- (b) the assessment certificate has not yet been issued in respect of the polyester;

then:

- (c) the application is to be treated, after the commencement of this item, as if it were an application for an assessment certificate in respect of the polyester as a polymer of low concern; and
- (d) to the extent that the fees paid in respect of the assessment of that polyester exceed the fees that would be payable in respect of an assessment of the polyester as a polymer of low concern, an amount equal to the amount of that excess must be refunded to the applicant.

8 At the end of section 11

Add:

- (3) If a chemical is included in the Inventory, the chemical may be imported into Australia, or manufactured in Australia, without obtaining an assessment certificate or permit.

Note: Subsection (3) is not intended to be an exhaustive description of the effects or consequences of including a chemical in the Inventory. There may be other consequences, express or implied, because of other provisions of the Act.

9 Subsection 18A(1)

Omit “subsection 19(5)”, substitute “section 19”.

10 Section 19

Repeal the section, substitute:

19 Transfer of industrial chemical from confidential section to non-confidential section

Definitions

- (1) In this section:

decision not to transfer, in respect of a chemical in the confidential section, means:

- (a) a decision by the Director not to transfer that chemical to the non-confidential section of the Inventory; or
- (b) if:
 - (i) the Director decides to transfer the chemical to the non-confidential section of the Inventory; and
 - (ii) the holder of a confidence about the chemical applies to the Tribunal for a review of the Director's decision within 28 days after the making of the decision; and
 - (iii) the Tribunal decides to revoke the Director's decision and substitute a decision not to so transfer the chemical; the Tribunal's decision.

inclusion date, in respect of a chemical in the confidential section means:

- (a) unless paragraph (b) applies—the date of the chemical's inclusion in the confidential section; or
- (b) if, since the chemical's inclusion in the confidential section, a decision or decisions have been made not to transfer the chemical—the date of the decision or of the last such decision.

Inclusion in confidential section to be reviewed every 5 years

- (2) An industrial chemical in the confidential section must be transferred to the non-confidential section on the fifth anniversary of its inclusion date unless a decision not to transfer the chemical is made before that fifth anniversary.

Notice of possible transfer

- (3) The Director must, for each chemical that is in the confidential section, notify each holder of a confidence about the chemical, in writing:
-

- (a) that the chemical will be transferred to the non-confidential section unless a decision not to transfer the chemical is made; and
- (b) setting out the terms of this section.

The Director must give the notice at least 3 months before the fifth anniversary of the inclusion date in respect of that chemical.

Holder may state why chemical should not be transferred

- (4) A holder of a confidence about a chemical may, within 28 days after being given a notice under subsection (3), give the Director a written statement setting out the reasons why the chemical should not be transferred to the non-confidential section.

After receipt of statement Director must decide

- (5) If a statement is given under subsection (4), the Director must, not later than the fifth anniversary of the inclusion date in respect of the chemical, make a decision whether or not to transfer the chemical to the non-confidential section.

Director's decision not to transfer chemical

- (6) If, having regard to any statement made to the Director under this section by the holder of a confidence about a chemical, the Director is satisfied that:
 - (a) the publication of some or all of the chemical's particulars could reasonably be expected to prejudice substantially the commercial interest of any holder of a confidence who gave such a statement; and
 - (b) the prejudice outweighs the public interest in the publication of those particulars;the Director:
 - (c) must decide not to transfer the chemical to the non-confidential section; and
 - (d) must give written notice of the decision to each holder of a confidence who gave such a statement.

Director's decision to transfer

- (7) If, having regard to the statement or statements given to the Director, the Director is not satisfied as specified in subsection (6), the Director:
- (a) must give written notice of the decision to transfer the chemical to each holder of a confidence who made a statement to the Director; but
 - (b) must delay the transfer:
 - (i) unless subparagraph (ii) applies, for 28 days after giving the notice; and
 - (ii) if the holder of a confidence applies during those 28 days to the Tribunal under section 102 for the review of the Director's decision—until the application to the Tribunal is finalised.

11 Transitional provision

If, before the commencement of items 10, 52, 54 and 56 of this Schedule, the Director has given written notice to the holders of a confidence about a chemical under section 19 of the *Industrial Chemicals (Notification and Assessment) Act 1989* as in force immediately before the commencement of those items, then, for the purposes of:

- (a) the Director's consideration of any statement received, whether before or after the commencement of those items, as a result of that notice; and
- (b) the Director's decision having regard to any statement so received; and
- (c) the implementation of the Director's decision and any possible review of that decision by the Tribunal; and
- (d) the liability of a person to pay any fees in respect of a statement given under that section;

that Act continues to have effect as if those items had never been enacted.

12 Subsection 21(1) (penalty)

Repeal the penalty, substitute:

Penalty: 300 penalty units.

13 Subsection 21L(4) (penalty)

Repeal the penalty, substitute:

Penalty: 300 penalty units.

14 Subsection 21W(5) (penalty)

Repeal the penalty, substitute:

Penalty: 300 penalty units.

15 Subsection 31(2)

Omit “, except in the case of a full public report of an assessment of a synthetic polymer of low concern,”.

16 Subsection 34(2)

Repeal the subsection.

17 Subsection 35(1)

Omit “of an assessment of a chemical other than a synthetic polymer of low concern”, substitute “about a chemical”.

18 Section 36

Omit “(if any)”.

19 Subsections 37(2) and 38(5) and (7)

Omit “(if any)”.

20 Subsection 40(1)

Omit “a full report about a synthetic polymer of low concern has been published under subsection 34(2) or”.

21 Subsection 40(8)

Omit “(if any)”.

22 Paragraphs 40G(1)(b) and (c)

Omit “(if any)”.

23 Transitional provision

If a full public report has been published in the *Chemical Gazette* in respect of a synthetic polymer of low concern in accordance with subsection 34(2) of the *Industrial Chemicals (Notification and Assessment) Act 1989* as in force before the date of commencement of items 16 and 17 of this Schedule, that publication is to be treated, on and after that day, as meeting the requirements of subsection 35(1) of that Act as amended by item 17.

24 Subsection 58(8) (penalty)

Repeal the penalty, substitute:

Penalty: 60 penalty units.

25 Subsection 60D(1)

Omit “the assessment certificate for,” substitute “assessment of”.

26 Paragraphs 60E(6)(b) and 60F(5)(a)

Omit “the assessment certificate for” (wherever occurring), substitute “assessment of”.

27 Subsection 61(4) (penalty)

Repeal the penalty, substitute:

Penalty: 300 penalty units.

28 Subsection 61(5) (penalty)

Repeal the penalty, substitute:

Penalty: 240 penalty units.

29 Subsection 64(1) (penalty)

Repeal the penalty, substitute:

Penalty: 120 penalty units.

30 Subsection 64(2) (penalty)

Repeal the penalty, substitute:

Penalty: 120 penalty units.

31 Subsection 65(1)

Omit “must”, substitute “may”.

32 Transitional provisions

- (1) If, before the commencement of item 31 of this Schedule:
- (a) the Director has, under subsection 65(1) of the *Industrial Chemicals (Notification and Assessment) Act 1989*, required the secondary notification of a chemical by persons to whom the notice applied; and
 - (b) the period for secondary notification had not expired;
- then the Director may, by notice published in the *Chemical Gazette* or published in such other way as the Director considers appropriate, revoke the notice requiring secondary notification.
- (2) If, in accordance with subitem (1), the Director revokes the notice requiring secondary notification:
- (a) the *Industrial Chemicals (Notification and Assessment) Act 1989* has effect as if the notice had never been published; and
 - (b) any application received under section 66 of that Act is treated as if it had never been so received; and
 - (c) if any fees have been paid in respect of the secondary notification, the Director must, on behalf of the Commonwealth, remit those fees.

33 At the end of section 65

Add:

- (7) If the Director requires the secondary notification of an industrial chemical by persons to whom a notice under subsection (1) or (2) applies, 2 or more of those persons may give a secondary notification of that chemical jointly.
- (8) If 2 or more persons give a joint secondary notification of an industrial chemical, those persons are jointly and severally liable for the fee prescribed under paragraph 110(1)(s) to be the fee in respect of a secondary notification.

34 Subsection 67(2) (penalty)

Repeal the penalty, substitute:

Penalty: 120 penalty units.

35 Subsections 68(1) and (2)

Omit “a chemical”, substitute “a new industrial chemical”.

36 Subsection 68(3)

Omit “A chemical”, substitute “A new industrial chemical”.

37 Subsection 68(4)

Omit “a chemical”, substitute “a new industrial chemical”.

38 Subsection 68(5)

After “an assessment”, insert “of a new industrial chemical”.

39 Subsections 68(6) and (7)

After “assessment and report”, insert “in relation to a new industrial chemical”.

40 After section 68

Insert:

68A Assessment of existing chemicals of which secondary notification required

- (1) If a secondary notification of an existing chemical has been given, the Director must cause the chemical to be assessed in accordance with section 60A and a report of the assessment to be prepared.
 - (2) If the secondary notification of an existing chemical is required but is not given by any person, the Director may cause the chemical to be assessed in accordance with section 60A and a report of the assessment to be prepared.
 - (3) For the purposes of subsections (1) and (2), an assessment in accordance with section 60A is to be conducted as if the references in section 60A to a priority existing chemical were references to an existing chemical.
 - (4) Sections 60B to 60F (inclusive) apply in relation to an assessment of, and report on, an existing chemical required by this section but do so as if:
 - (a) any references in those provisions to a priority existing chemical were references to an existing chemical; and
-

- (b) any references in those provisions to the applicant for the assessment of the chemical were references to each person who gave secondary notification of the chemical; and
 - (c) the reference in section 60E to a notice under section 58 were a reference to a notice under section 69.
- (5) Subject to subsection (6), an assessment of an existing chemical is to be made and a draft report of the assessment to be completed under section 60C within 6 months after the day on which the last information required for the assessment is received.
- (6) The Minister may extend the period for assessment and report in relation to an existing chemical by up to 6 months if it is not reasonably practicable for the assessment to be carried out thoroughly, and the report completed, within that period.
- (7) If the Minister extends the period for assessment and report in relation to an existing chemical, the Minister is required to notify each applicant for the assessment of the extension immediately.

Note: The heading to section 68 is altered by inserting “**new industrial**” after “**Assessment of**”.

41 Transitional provision

If:

- (a) a secondary notification of an existing chemical has been given; and
- (b) the Director has commenced the assessment of the chemical in accordance with the terms of section 68 of the *Industrial Chemicals (Notification and Assessment) Act 1989* before the commencement of items 35 to 39 of this Schedule;

the assessment is to continue as if the amendment of that Act made by those items had not yet come into effect.

42 Subsection 69(1)

Repeal the subsection, substitute:

- (1) For the purpose of assessing a new industrial chemical under section 68, or an existing chemical under section 68A, the Director may, by notice in the *Chemical Gazette*, require:
 - (a) all persons who introduced the chemical; or
 - (b) specified persons who introduced the chemical; or

(c) specified persons who the Director considers have relevant information;

but who are not required to give secondary notification of the chemical, to provide the Director in writing the information about the chemical that is specified in the notice, being particulars about a matter relating to the circumstances because of which the notification is required.

43 Transitional provision

If the Director has given a notice under subsection 69(1) of the *Industrial Chemicals (Notification and Assessment) Act 1989* and that notice is in force immediately before the commencement of item 42 of this Schedule, that notice has effect, on and after the commencement of that item, as if it had been given by the Director under subsection 69(1) of that Act as amended by that item.

44 Subsection 69(4) (penalty)

Repeal the penalty, substitute:

Penalty: 60 penalty units.

45 Paragraph 70(1)(a)

After “certificate for a”, insert “new industrial”.

46 Section 81 (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

47 Section 85 (penalty)

Repeal the penalty, substitute:

Penalty: 1 penalty unit.

48 Subsection 88(3) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

49 Subsection 90(1)

Repeal the subsection, substitute:

- (1) There is to be a Director, National Industrial Chemicals Notification and Assessment Scheme, who is to be appointed by the Governor-General.

50 Transitional provision

Despite the repeal and substitution of subsection 90(1) of the *Industrial Chemicals (Notification and Assessment) Act 1989* by item 49 of this Schedule:

- (a) the person holding office as the Director of Chemicals Notification and Assessment immediately before the commencement of that item continues to hold office, on and after the commencement of that item, as if the person had been appointed under section 90 of that Act as amended by that item, for the remainder of the term of the person's appointment, as Director, National Industrial Chemicals Notification and Assessment Scheme; and
- (b) any act or thing done, any decision made, or any document executed by, or relating to, the Director of Chemicals Notification and Assessment is to be treated, on and after the commencement of that item, as if it were an act or thing done, a decision made, or a document that had been executed by, or relating to, the Director, National Industrial Chemicals Notification and Assessment Scheme.

51 Paragraph 102(1)(a)

Omit "or 68(6)", substitute ", 68(6) or 68A(5)".

52 Paragraph 102(1)(b)

Omit "19(9)", substitute "19(7)".

53 Paragraph 102(1)(b)

Omit "65(2)", substitute "65(1) or (2)".

54 Section 104A

Omit "19(8) or (9)", substitute "19(6) or (7)".

55 Subsection 106(5) (penalty)

Omit "\$30,000", substitute "300 penalty units"

56 Paragraph 110(1)(caaa)

Omit “19(6)”, substitute “19(4)”.

57 Paragraph 111(e)

Repeal the paragraph, substitute:

- (e) prescribing penalties not exceeding, in the case of a natural person, a fine of 10 penalty units and, in the case of a body corporate, a fine of 50 penalty units for offences under the regulations.

Schedule 2—Amendment of the Safety, Rehabilitation and Compensation Act 1988

Part 2—Amendments relating to indexation of normal weekly earnings

13 Subsection 8(9)

Repeal the subsection, substitute:

- (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:

Schedule 2 Amendment of the Safety, Rehabilitation and Compensation Act 1988
Part 2 Amendments relating to indexation of normal weekly earnings

- (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.

Part 3—Amendments relating to amount of compensation

14 Subsection 19(2)

Repeal the subsection, substitute:

- (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:

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

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.

15 Subsection 19(3)

Repeal the subsection, substitute:

- (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:

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

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.

16 Paragraph 19(4)(a)

After "employment" (first occurring), insert "(including self-employment)".

17 Subsection 132A(1)

Repeal the subsection, substitute:

- (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.

Note: The heading to section 132A is replaced by the heading "**Former employees under 65 who are capable of engaging in any work**".

18 Paragraph 132A(2)(a)

Repeal the paragraph, substitute:

- (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

19 Paragraph 132A(3)(a)

Repeal the paragraph, substitute:

- (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

20 Application

The amendments made by this Part have effect only in respect of determinations in relation to compensation that are made after the end of the period of 6 months after the day on which this Act receives the Royal Assent.

Part 4—Amendment relating to compensation for non-economic loss in relation to certain injuries

21 At the end of section 27

Add:

- (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.

Part 5—Amendments relating to payment of compensation to persons aged over 63

22 Subsection 23(1)

Omit “a person”, substitute “an employee”.

23 Subsection 23(1A)

Omit “APS”.

24 Subsection 30(3) (definition of *n*)

Repeal the definition, substitute:

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:

- (a) if the employee is injured before reaching 63 years of age—on the day immediately before the day on which the employee reaches 65 years of age; and
- (b) if the employee is injured on or after reaching 63 years of 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.

25 Application

The amendments made by items 22, 23 and 24 have effect only in relation to employees:

- (a) who are injured after the day on which this Act receives the Royal Assent; or
- (b) who, on that day:
 - (i) have reached 63 years of age; and
 - (ii) are receiving compensation under section 19, 20, 21, 21A or 22 of the *Safety, Rehabilitation and*

Schedule 2 Amendment of the Safety, Rehabilitation and Compensation Act 1988
Part 5 Amendments relating to payment of compensation to persons aged over 63

Compensation Act 1988 or are eligible to apply for such compensation.

Part 6—Amendments concerning rehabilitation program providers

25A Subsection 4(1) (definition of *approved program provider*)

Repeal the definition, substitute:

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.

26 Section 34

Repeal the section, substitute:

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 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 instrument in writing, 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.
- (3) Criteria determined under subsection (1), and any variation of those criteria that is made from time to time, must be published in the *Gazette*.

34E Comcare to establish operational standards for rehabilitation program providers

- (1) Comcare must, by instrument in writing, 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.

- (3) Standards established under subsection (2), and any variation of those standards that is made from time to time, must be published in the *Gazette*.
- (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

- (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
 - (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
- (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

- (1) In this Division a reference to an approved form is a reference to a form that is approved, by instrument in writing, by Comcare.
- (2) The instrument is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

27 Before section 35

Insert:

Division 3—Rehabilitation programs

27A Subsection 37(2)

Repeal the subsection, substitute:

- (2) A rehabilitation authority must not make arrangements for the provision of a rehabilitation program to its employees other than by an approved program provider.

28 Saving provision

If, by instrument in writing, Comcare had approved a person who provides rehabilitation programs under section 34 of the *Safety, Rehabilitation and Compensation Act 1988* as in force immediately before the commencement of this item:

- (a) that approval continues in force, on and after that date, until the next following renewal date, subject to and in accordance with the terms on which the approval was granted, as if section 34 of that Act had not been repealed; but
- (b) if the person wishes to seek renewal of the approval, the person must seek that approval in accordance with the operational standards established under section 34E and having effect from that next following renewal date.

Part 7—Amendment relating to common law remedies for dependants of deceased employees

29 At the end of section 44

Add:

(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).

Part 8—Amendments concerning licences to enable Commonwealth authorities and certain corporations to accept liability for, and determine, claims

30 Subsection 4(1) (definition of *corporation*)

Omit “Part VIII B”, substitute “Part VIII”.

31 Subsection 4(1) (definition of *eligible corporation*)

Repeal the definition , substitute:

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

32 Subsection 4(1) (definition of *licence*)

Omit “Part VIII A or VIII B”, substitute “Part VIII”.

33 Subsection 4(1) (definition of *licensed corporation*)

Omit “Part VIII B”, substitute “Part VIII”.

34 Subsection 4(1)

Insert:

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

35 Subsection 4(1) (paragraphs (a) and (aa) of the definition of *relevant authority*)

Repeal the paragraphs, substitute:

(a) in relation to an employee who is employed by a licensee—the licensee; and

36 Subsection 28(4)

Omit “licensed authority, a licensed corporation”, substitute “licensee”.

37 Section 41A

Repeal the section, substitute:

41A Delegation by rehabilitation authority

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.

38 Subsections 60(2) and (3)

Repeal the subsections, substitute:

- (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.

39 Paragraphs 62(2)(c), (d), (e) and (f)

Repeal the paragraphs, substitute:

- (c) if the determination affects a Commonwealth authority—that Commonwealth authority.

40 After subsection 62(2)

Insert:

- (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.
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41 Paragraphs 64(1)(c) to (h) (inclusive)

Repeal the paragraphs, substitute:

- (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.

42 Subsection 64(2)

Repeal the subsection.

43 Subsection 67(1A)

Repeal the subsection, substitute:

- (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.

44 Subsection 70B(2)

Omit “Part VIII B”, substitute “Part VIII”.

45 Subsection 73A(2A)

Repeal the subsection, substitute:

- (2A) The Commission may prepare and issue to the principal officer of a licensed corporation written general policy guidelines in relation to the operation of this Act to the extent that the Act confers functions or powers on the licensed corporation.

46 Paragraph 89E(1)(d)

Omit “licensed authorities”, substitute “licensees”.

47 Subsection 96A(2) (paragraph (a) of the definition of *Estimated liability*)

Omit “Part VIIIA”, substitute “Part VIII”.

48 Subsection 96A(2) (paragraph (a) of the definition of *Estimated administrative costs*)

Omit “Part VIIIA”, substitute “Part VIII”.

49 Parts VIIIA and VIIIB

Repeal the Parts, substitute:

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

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 notice in writing, declare the corporation to be eligible to be granted a licence under this Part.

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.

- (2) Directions given by the Minister to the Commission under section 89D concerning licences:

- (a) must be published in the *Gazette*; and
- (b) do not take effect until they are so published; and
- (c) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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.

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.
- (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.
- (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) so far as concerns a licensee who is covered by the *Occupational Health and Safety (Commonwealth Employment) Act 1991*—that part of the cost incurred by the Commission and by Comcare in carrying out their respective functions under that Act 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.

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 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:
- (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.

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
 - (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.
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- (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.

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 Comcare or the Commission has requested the licensee not to make; and
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- (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.

50 Transitional provisions

- (1) Subject to subitems (2) and (3), if, immediately before the day this Part commences, a Commonwealth authority or corporation held a licence under Part VIIIA or VIIIB of the *Safety, Rehabilitation and Compensation Act 1988*, the provisions of that Act as in force immediately before that day continue to apply in relation to the authority or corporation in its capacity as licence holder under Part VIIIA or VIIIB, as the case requires, as if the items of this Part had not been enacted.
- (2) Nothing in subitem (1) implies that a Commonwealth authority or a corporation that holds a licence under Part VIIIA or Part VIIIB of the *Safety, Rehabilitation and Compensation Act 1988* may not, while continuing to hold that licence, apply for a licence under Part VIII of that Act.
- (3) If a Commonwealth authority or a corporation that holds a licence under Part VIIIA or Part VIIIB of the *Safety, Rehabilitation and Compensation Act 1988* is granted a licence under Part VIII of that Act:
 - (a) the Commission must determine, through the terms and conditions of the licence granted under Part VIII, the arrangements for dealing with all claims made to the authority or corporation in its capacity as a licence holder under Part VIIIA or Part VIIIB that have not been finally and completely dealt with; and

- (b) subject to any arrangements so made, the licence granted under Part VIIIA or Part VIIIB of that Act is of no further effect.

51 Paragraph 114A(1)(a)

Repeal the paragraph, substitute:

- (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

52 Section 121

Omit “97(1) or 101(1), section 108C”, substitute “section 97P or 100”.

Part 9—Amendments concerning compensation payable for hearing loss

53 Subsection 24(7)

Repeal the subsection, substitute:

(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.

54 Subsection 25(4)

After “permanent impairment of an employee”, insert “(other than a hearing loss)”.

55 At the end of section 25

Add:

- (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.

56 Application

The amendments made by this Part have effect only in relation to claims for compensation in respect of permanent impairment resulting from an injury suffered by an employee after the day on which this Act receives the Royal Assent.

Part 10—Amendments relating to premiums, special premiums and regulatory contributions

57 Subsection 4(1)

Insert:

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:

- (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).

58 Subsection 4(1) (definition of *premium*)

Repeal the definition, substitute:

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.

59 Subsection 4(1)

Insert:

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.

60 At the end of section 45

Add:

- (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.

61 Section 46

Repeal paragraph (c) and omit the words following that paragraph, substitute:

- (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

Note: The heading to section 46 is altered by omitting “**proceeding**” and substituting “**common law claims**”.

62 Section 47

Repeal the section, substitute:

47 Notice of common law claims against Commonwealth

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

63 Subsections 48(4A) and (5)

Repeal the subsections, substitute:

(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).

64 Subsection 50(1)

Repeal paragraph (c) and omit the words following that paragraph, substitute:

- (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.

65 Subsections 50(2), (3), (4) and (5)

Repeal the subsections, substitute:

- (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:
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- (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
 - (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.
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66 Subsection 50(7)

Repeal the subsection, substitute:

- (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 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.

Note: The heading to section 50 is altered by omitting “**Proceedings**” and substituting “**Common law claims**”.

67 Subsections 51(1) and (2)

Omit “instituted” (wherever occurring), substitute “arising out of a claim made”.

68 At the end of Part IV

Add:

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):
 - (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.

69 Paragraph 69(ea)

Repeal the paragraph, substitute:

- (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;
- (ed) to determine, under section 97D, the amount of the regulatory contributions payable by Entities, and by Commonwealth authorities, 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 the function referred to in paragraph (ec)); and
 - (ii) the cost incurred by the Commission and Comcare in carrying out their respective functions under the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

70 Section 90A

Repeal the section.

71 Transitional provision

Despite the repeal of section 90A of the *Safety, Rehabilitation and Compensation Act 1988* as in force immediately before 1 July 2002, that section as so in force continues to apply, on and after that date, in relation to any premium collected, or to be collected, by Comcare in respect of a financial year starting before that date as if that section had not been repealed.

72 Section 90C

Repeal the section, substitute:

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)) 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:

Premiums received + Notional interest – 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 Minister responsible for the administration of the *Commonwealth Authorities and Companies Act 1997* 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.

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 Minister responsible for the administration of the *Commonwealth Authorities and Companies Act 1997* 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 the bank account maintained in accordance with section 18 of the *Commonwealth Authorities and Companies Act 1997* 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).

73 Saving provisions

- (1) Despite the repeal of section 90C of the *Safety, Rehabilitation and Compensation Act 1988* by item 72 of this Schedule, that section as in force immediately before 1 July 2002 continues to apply, on and after that date, to enable Comcare to discharge liabilities, and meet administrative expenses, incurred before 1 July 2002 as if it had not been repealed.
- (2) For the purposes of the continued operation of section 90C of the *Safety, Rehabilitation and Compensation Act 1988* as in force immediately before 1 July 2002 in accordance with subitem (1), any determination of notional interest under subsection (2), and any determination under subsection (3), of that section as continued in force, continue to have effect as if that section had not been repealed.
- (3) For the purposes of the operation of section 90C of the *Safety, Rehabilitation and Compensation Act 1988* as substituted by item 72 of this Schedule (the **substituted section**), any determination of notional interest under subsection (2), and any determination under subsection (3), of section 90C of that Act as continued in force under subitem (1), continue to have effect as if they were determinations made under the substituted section.

74 Paragraph 91(3)(a)

After "its powers", insert "under this Act and under the *Occupational Health and Safety (Commonwealth Employment) Act 1991*".

75 Division 4A of Part VII

Repeal the Division, substitute:

Division 4A—Premiums and regulatory contributions

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

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

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

97D Regulatory contributions

- (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 (Commonwealth Employment) Act 1991* 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.

97E Commission may issue guidelines for determination of premiums and regulatory contributions

- (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.

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.
- (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.

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.

97H Payment of the premium or regulatory contribution

- (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.

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.
- (2) The notice 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) 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.

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.
- (2) The notice 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, 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 or the Commonwealth authority.

97L Refund of premium or regulatory contribution

- (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).

97M Variation of determination of premium or regulatory contribution

- (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:
 - (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.

97N Repayment of premium excess etc.

- (1) Comcare must make the payments required under section 97L or 97M from Comcare-retained funds within the meaning of subsection 90C(5).
- (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 Penalty for late payment of premium or regulatory contribution

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 on the amount, at such rate as is from time to time specified by the Minister by notice in the *Gazette*, in respect of each day on which the amount is not so paid. However, interest is not payable under this section if it is less than \$100.

76 Saving provision—Continuance of Division 4A in respect of certain premiums

Despite the repeal of Division 4A of Part VII of the *Safety, Rehabilitation and Compensation Act 1988* effected by item 75 of this Schedule, the provisions of that Division as in force before 1 July 2002 continue in force on and after that date in relation to premiums payable by each Entity and Commonwealth authority:

- (a) in respect of the financial year starting on 1 July 1992; and
- (b) each subsequent financial year starting before 1 July 2002;

as if those provisions had not been repealed.

77 Saving provision—Review by Commission unaffected by repeal of Division 4A

Without limiting the generality of item 76 of this Schedule, the Commission may:

- (a) if, before 1 July 2002, it had commenced but not completed a review, under section 96D of the *Safety, Rehabilitation and Compensation Act 1988*, of the estimate of a premium determined to be payable by an Entity or Commonwealth authority in respect of a financial year starting before 1 July 2002—complete that review; or
- (b) if, before that date, it had not commenced under that section a review of such an estimate—undertake that review;

as if the repeal of Division 4A of Part VII of that Act had not occurred.

78 Saving provision—Review by Minister unaffected by repeal of Division 4A

(1) Without limiting the generality of item 76 of this Schedule, if, before 1 July 2002, the Minister had commenced but not completed a review under section 96F of the *Safety, Rehabilitation and Compensation Act 1988* of:

- (a) an estimate of a premium determined to be payable by an Entity or Commonwealth authority in respect of a financial year starting before 1 July 2002; or
- (b) that estimate as varied by the Commission as a result of a review under section 96D of that Act;

the Minister may complete that review as if the repeal of Division 4A of Part VII of that Act had not occurred.

(2) Without limiting the generality of item 76 of this Schedule, if, before 1 July 2002, the Minister had not commenced a review under section 96F of the *Safety, Rehabilitation and Compensation Act 1988* of:

- (a) an estimate of a premium determined to be payable by an Entity or Commonwealth authority in respect of a financial year starting before 1 July 2002; or
- (b) that estimate as varied by the Commission as a result of a review under section 96D of that Act;

the Minister may undertake that review as if the repeal of Division 4A of Part VII of that Act had not occurred.

79 Saving provision—Notices, requests and directions continue to have effect

Any notice, request or direction given or made under, or for the purposes of, a provision of Division 4A of Part VII of the *Safety, Rehabilitation and Compensation Act 1988* as in force before 1 July 2002 continues to have effect, on and after that date, as a notice, request or direction given or made under, or for the purposes of, that provision as continued in force in accordance with item 76 of this Schedule.

80 Validation of certain acts or things done in relation to actions for non-economic loss

(1) If a contribution or premium was collected under the *Safety, Rehabilitation and Compensation Act 1988* from an Entity or a Commonwealth authority in respect of a financial year starting before 1 July 1999 or in respect of a part of such a year, then, despite any indication to the contrary in the provisions of that Act as in force at the

time the contribution or premium was determined or otherwise ascertained, that contribution or premium is taken to have been determined on the basis that it covered:

- (a) liability for compensation payable under that Act; and
 - (b) liability for any amount payable as a result of an action for non-economic loss in respect of an injury suffered by an employee during the period to which the premium related.
- (2) Any act or thing that was done (including any payment that was made) by the Commonwealth, Comcare or the Commission under the *Safety, Rehabilitation and Compensation Act 1988* as in force at any time before the commencement of this item, in relation to an action for non-economic loss in respect of an injury suffered by an employee before 1 July 1999, is not invalid simply because there was no capacity, at the time of the injury, to collect a contribution or premium to cover liability for amounts payable as a result of such an action.
- (3) Any act or thing that is done (including any payment that is made) by the Commonwealth, Comcare or the Commission under the *Safety, Rehabilitation and Compensation Act 1988* as in force at any time after the commencement of this item, in relation to an action for non-economic loss in respect of an injury suffered by an employee before 1 July 1999, is not invalid simply because there was no capacity, at the time of the injury, to collect a contribution or premium to cover liability for amounts payable as a result of such an action.
- (4) In this item:
- 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:
- (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).

Part 12—Other amendments

84 Subsection 4(1) (at the end of paragraphs (a) to (f) of the definition of *medical treatment*)

Add “or”.

85 Subsection 4(1) (at the end of the definition of *medical treatment*)

Add:

; or (i) any other form of treatment that is prescribed for the purposes of this definition.

86 Subsection 4(1) (at the end of the definition of *rehabilitation authority*)

Add:

; and (d) if the employee is a member of the Defence Force—the Chief of the Defence Force.

87 Subsection 21A(1)

Omit “frrom”, substitute “from”.

88 At the end of section 41A

Add:

(2) A rehabilitation authority who is the Chief of the Defence Force may, by written instrument, delegate to an officer or employee of the Commonwealth any of the powers and functions of the rehabilitation authority under this Part.

89 Subsection 43(1)

Omit “the person is, or may become, entitled be not paid to”, substitute “the person is entitled, or may become entitled, not be paid to”.

90 Section 47 (penalty)

Repeal the penalty, substitute:

Penalty: 5 penalty units.

91 Subsection 48(2) (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

92 Paragraph 54(4)(a)

Omit “Secretary to”, substitute “Secretary of”.

93 Paragraph 89E(1)(fa)

Omit “of the Defence Force” (first occurring).

94 After paragraph 89E(1)(fa)

Insert:

(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;

95 At the end of section 89R

Add:

- (2) Despite paragraph 34AB(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(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.

Note: The heading to section 89R is altered by adding at the end “**and sub-delegation**”.

100 Subsection 120(3)

Omit “subsection (1)”, substitute “subsection (2)”.

101 Subsection 120(4) (penalty)

Repeal the penalty, substitute:

Penalty: 5 penalty units.

102 Section 121

After “119(7)”, insert “, a declaration under subsection 5(12)”.

103 Subparagraph 124(8)(b)(i)

Omit “1930 Act”, substitute “the 1930 Act”.

104 After section 124

Insert:

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).

105 After subsection 131(2)

Insert:

- (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.

106 After subsection 131(3)

Insert:

(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.

107 Subsections 131(5) and (6) and 132(5)

Omit "or (3)", substitute ", (3) or (4)".

Schedule 3—Amendment of other Acts

Equal Opportunity for Women in the Workplace Act 1999

1 Subsection 17(1)

Omit “the 3 months”, substitute “the 2 months”.

2 Subsection 32(1) (penalty)

Repeal the penalty, substitute:

Penalty: 25 penalty units or imprisonment for 3 months, or both.

Income Tax Assessment Act 1936

3 Paragraph 16(4)(g)

Repeal the paragraph, substitute:

- (fd) Comcare, established by section 68 of the *Safety, Rehabilitation and Compensation Act 1988*, for purposes consistent with the functions of that body under that Act;
- (g) the Safety, Rehabilitation and Compensation Commission, established by section 89A of the *Safety, Rehabilitation and Compensation Act 1988*, for purposes consistent with the functions of that body under that Act;

National Occupational Health and Safety Commission Act 1985

4 Section 3 (paragraph (b) of the definition of *nominating authority*)

Omit “the Confederation of Australian Industry”, substitute “the Australian Chamber of Commerce and Industry”.

5 Paragraphs 10(1)(c) and 21(6)(b)

Omit “the Confederation of Australian Industry”, substitute “the Australian Chamber of Commerce and Industry”.

6 Section 46 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units or imprisonment for 6 months, or both.

7 Subsection 47(1) (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units or imprisonment for 6 months, or both.

8 Section 48 (penalty)

Repeal the penalty, substitute:

Penalty: 20 penalty units or imprisonment for 1 year, or both.

9 Section 49 (penalty)

Repeal the penalty, substitute:

Penalty: 20 penalty units or imprisonment for 1 year, or both.

10 Subsection 62(2) (penalty)

Repeal the penalty, substitute:

Penalty:

- (a) if the offender is a natural person—10 penalty units or imprisonment for 6 months, or both; or
- (b) if the offender is a body corporate—50 penalty units.

11 Subsection 62(3) (penalty)

Repeal the penalty, substitute:

Penalty:

- (a) if the offender is a natural person—20 penalty units or imprisonment for 1 year, or both; or
- (b) if the offender is a body corporate—100 penalty units.

***Occupational Health and Safety (Commonwealth
Employment) Act 1991***

12 Subsection 67B(5)

After “each subsequent financial year”, insert “before the financial year starting on 1 July 2002”.

Schedule 3 Amendment of other Acts

*[Minister's second reading speech made in—
House of Representatives on 7 December 2000
Senate on 24 May 2001]*

(202/00)