



Commonwealth Employees' Rehabilitation and Compensation Act 1988

No. 75 of 1988

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Commonwealth Employees' Rehabilitation and Compensation Act 1988

No. 75 of 1988

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

[Assented to 24 June 1988]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*.

Commencement

2. (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

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Application of Act

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

Interpretation

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

“administering authority” means a Commonwealth authority declared by the Minister under section 101 to be an administering authority;

“adoption” means adoption under a law of a State or Territory or of a foreign country;

“aggravation” includes acceleration or recurrence;

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

“approved Guide” means:

(a) the document, prepared by the Commission in accordance with section 28 under the title “Guide to the Assessment of the Degree of Permanent Impairment”, that has been approved by the Minister and is for the time being in force; and

(b) if an instrument varying the document has been approved by the Minister—that document as so varied;

“approved program provider” means a person approved under section 34;

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

“Chief Executive Officer” means the Chief Executive Officer of the Commission and includes a person who is acting as the Chief Executive Officer;

“claim” means a claim under Part V;

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

“Commission” means the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees established by section 68;

“Commissioner” means a member of the Commission other than the Chief Executive Officer;

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

“Commonwealth authority” means:

(a) a body corporate that is incorporated for a public purpose by a law of the Commonwealth, other than a body declared

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by the Minister, by notice in writing, to be a body corporate to which this Act does not apply;

- (b) a body corporate that is incorporated for a public purpose by a law of a Territory (other than the Northern Territory) and is declared by the Minister, by notice in writing, to be a body corporate to which this Act applies; or
- (c) a body corporate:
 - (i) that is incorporated under a law of the Commonwealth or a law in force in a State or Territory;
 - (ii) in which the Commonwealth, or a body corporate referred to in paragraph (a) or (b), has a controlling interest; and
 - (iii) that is declared by the Minister, by notice in writing, to be a body corporate to which this Act applies;

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

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

“dependant”, in relation to a deceased employee, means:

- (a) the spouse, father, mother, step-father, step-mother, father-in-law, mother-in-law, grandfather, grandmother, son, daughter, step-son, step-daughter, grandson, grand-daughter, brother, sister, half-brother or half-sister of the employee; or
- (b) a person in relation to whom the employee stood in the position of a parent or who stood in the position of a parent to the employee;

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

“dependent” means dependent for economic support;

“Deputy Chief Executive Officer” means the Deputy Chief Executive Officer of the Commission;

“disease” means:

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

being an ailment or an aggravation that was contributed to in a material degree by the employee's employment by the Commonwealth;

“employee” has the meaning given in section 5;

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“exempt authority” means a Department or Commonwealth authority (other than an administering authority) declared by the Minister under section 35 to be an exempt authority;

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

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

“injury” means:

- (a) a disease suffered by an employee; or
- (b) an injury (other than a disease) suffered by an employee, being a physical or mental injury (or the aggravation of such an injury) arising out of, or in the course of, the employee’s employment;

but does not include any such disease or injury suffered by an employee as a result of reasonable disciplinary action taken against the employee or failure by the employee to obtain a promotion, transfer or benefit in connection with his or her employment;

“loss”, in relation to property used by an employee, includes the destruction of that property;

“medical treatment” means:

- (a) medical or surgical treatment by, or under the supervision of, a legally qualified medical practitioner;
- (b) therapeutic treatment obtained at the direction of a legally qualified medical practitioner;
- (c) dental treatment by, or under the supervision of, a legally qualified dentist;
- (d) therapeutic treatment by, or under the supervision of, a physiotherapist, masseur or chiropractor registered under the law of a State or Territory providing for the registration of physiotherapists, masseurs or chiropractors, as the case may be;
- (e) an examination, test or analysis carried out on, or in relation to, an employee at the request or direction of a legally qualified medical practitioner or dentist and the provision of a report in respect of such an examination, test or analysis;
- (f) the supply, replacement or repair of an artificial limb or other artificial substitute or of a medical, surgical or other similar aid or appliance;
- (g) treatment and maintenance as a patient at a hospital; or

(h) nursing care, and the provision of medicines, medical and surgical supplies and curative apparatus, whether in a hospital or otherwise;

“member” means a member of the Commission;

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

“normal weekly earnings” means the normal weekly earnings of an employee calculated under section 8;

“normal weekly hours”, in relation to an employee, means the average number of hours (including hours of overtime) worked in each week by the employee in his or her employment during the relevant period as calculated for the purpose of applying the formula in subsection 8 (1) or (2);

“overtime” includes:

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

“permanent” means likely to continue indefinitely;

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

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

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

“prescribed child” means:

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

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“principal officer”, in relation to a Commonwealth authority, means the person who constitutes, or is acting as the person who constitutes, that authority or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which he or she is present;

“proceeding under Part VI” has the meaning given in subsection (12);

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

“rehabilitation authority”, in relation to an employee, means:

- (a) where the employee is employed by an exempt authority—the Commission;
- (b) where the employee is employed by an administering authority—the principal officer of that authority; and
- (c) where the employee is employed by a Department or a Commonwealth authority, other than an exempt authority—the Secretary of the Department or the principal officer of the Commonwealth authority, as the case may be;

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

“relevant authority” means:

- (a) in relation to an employee who is employed by an administering authority—that administering authority; and
- (b) in relation to any other employee—the Commission;

“relevant period” means the period calculated under section 9;

“spouse” includes:

- (a) in relation to an employee or a deceased employee—a person of the opposite sex to the employee who lives with, or immediately before the date of the employee’s death lived with, the employee as the spouse of the employee on a *bona fide* domestic basis although not legally married to the employee; and
- (b) in relation to an employee or a deceased employee who is or was a member of the Aboriginal race of Australia or a descendant of indigenous inhabitants of the Torres Strait Islands—a person who is or was recognised as the employee’s husband or wife by the custom prevailing in the tribe or group to which the employee belongs or belonged;

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

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- (a) in the case of an employee who, on the day on which he or she was injured was a permanent employee of the Commonwealth and who did not subsequently terminate that employment—employment by the Commonwealth in work for which the employee is suited having regard to:
 - (i) the employee's age, experience, training, language and other skills;
 - (ii) the employee's suitability for rehabilitation or vocational retraining;
 - (iii) where employment is available in a place that would require the employee to change his or her place of residence—whether it is reasonable to expect the employee to change his or her place of residence; and
 - (iv) any other relevant matter; and
- (b) in any other case—any employment (including self-employment), having regard to the matters specified in subparagraphs (a) (i), (ii), (iii) and (iv);

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

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

“superannuation scheme” means any superannuation scheme under which the Commonwealth or a Commonwealth authority makes contributions on behalf of employees and includes a superannuation or provident scheme established or maintained by the Commonwealth or a Commonwealth authority;

“the 1912 Act” means the *Commonwealth Workmen's Compensation Act 1912*;

“the 1930 Act” means the *Commonwealth Employees' Compensation Act 1930*;

“the 1971 Act” means the *Compensation (Commonwealth Government Employees) Act 1971*;

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

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(2) For the purposes of paragraph (a) of the definition of "dependant", relationships referred to in that paragraph shall be taken to include:

- (a) illegitimate relationships and relationships by adoption; and
- (b) relationships that are traced through illegitimate relationships or relationships by adoption.

(3) For the purposes of this Act, any physical or mental injury or ailment suffered by an employee as a result of medical treatment of an injury shall be taken to be an injury if, but only if:

- (a) compensation is payable under this Act in respect of the injury for which the medical treatment was obtained; and
- (b) it was reasonable for the employee to have obtained that medical treatment in the circumstances.

(4) For the purposes of this Act, a person shall be taken to have been wholly or partly dependent on an employee at the date of the employee's death if the person would have been so dependent but for an incapacity of the employee that resulted from an injury.

(5) For the purposes of this Act, a person who, immediately before the date of an employee's death, lived with the employee and was:

- (a) the spouse of the employee; or
- (b) a child of the employee, being a prescribed child;

shall be taken to be a person who was wholly dependent on the employee at that date.

(6) For the purposes of this Act, other than subsection 17 (5), a son or daughter of a deceased employee who was born alive after the employee's death shall be treated as if he or she had been born immediately before the employee's death and was wholly dependent upon the employee at the date of the employee's death.

(7) In ascertaining, for the purposes of this Act, whether a child is or was dependent on an employee, any amount of:

- (a) allowance under Part IX, X or XII of the *Social Security Act 1947*; or
- (b) pension under Part XI of that Act;

shall not be taken into account.

(8) A reference in this Act to an injury suffered by an employee is, unless the contrary intention appears, a reference to an injury suffered by the employee in respect of which compensation is payable under this Act.

(9) A reference in this Act to an incapacity for work is a reference to an incapacity suffered by an employee as a result of an injury, being:

- (a) an incapacity to engage in any work; or

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(b) an incapacity to engage in work at the same level at which he or she was engaged by the Commonwealth in that work or any other work immediately before the injury happened.

(10) For the purposes of the application of this Act in relation to an employee employed by an administering authority, or a dependant of such a person, a reference in this Act (other than in section 28 or Part III, V, VI, VII or VIII) to the Commission is, unless the contrary intention appears, a reference to that authority.

(11) A reference in this Act to a claimant is, in relation to any time after the death of the claimant, a reference to his or her legal personal representative.

(12) A reference in this Act to the institution of a proceeding under Part VI in respect of a reviewable decision is a reference to the making of an application to the Administrative Appeals Tribunal for review of that decision.

(13) For the purposes of this Act, an employee who is under the influence of alcohol or a drug (other than a drug prescribed for the employee by a legally qualified medical practitioner or dentist and used by the employee in accordance with that prescription) shall be taken to be guilty of serious and wilful misconduct.

Employees

5. (1) In this Act, unless the contrary intention appears, "employee" means a person who is employed by the Commonwealth or by a Commonwealth authority, whether the person is so employed under a law of the Commonwealth or of a Territory or under a contract of service or apprenticeship.

(2) Without limiting the generality of subsection (1):

(a) a member of the Australian Federal Police;

(b) a member of the Defence Force; or

(c) a person (other than a person to whom subsection (3) applies) who is the holder of or is acting in:

(i) an office established by a law of the Commonwealth, other than an office that is declared by the Minister, by notice in writing, to be an office to which this Act does not apply; or

(ii) an office that is established by a law of a Territory (other than the Northern Territory) and is declared by the Minister, by notice in writing, to be an office to which this Act applies;

shall, for the purposes of this Act, be taken to be employed by the Commonwealth, and the person's employment shall, for those purposes, be taken to be constituted by the person's performance of duties as such a member of the Australian Federal Police or member of the Defence Force or the duties of that office, as the case may be.

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(3) A person who:

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

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

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

as the case may be.

(4) A person:

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

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

(5) Subsection (4) does not operate to make the Commission liable to pay compensation in respect of an injury sustained by an employee during an attendance to which that subsection applies if the injury was sustained because the employee voluntarily and unreasonably subjected himself or herself to an abnormal risk of injury.

(6) The Minister may, by notice in writing, declare:

- (a) that persons specified in the notice, being persons who engage in activities or perform acts:**
 - (i) at the request or direction, for the benefit, or under a requirement made by or under a law, of the Commonwealth;**
or
 - (ii) at the request or direction, or for the benefit, of a Commonwealth authority;**

shall, for the purposes of this Act, be taken to be employed by the Commonwealth, or by that authority, as the case may be; and

- (b) that the employment of the person shall, for those purposes, be taken to be constituted by the performance by the person of such acts as are specified in the notice;**

and such a declaration shall have effect accordingly.

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(7) For the purposes of the application of this Act in relation to a person employed by a Commonwealth authority, references in this Act to the Commonwealth shall be read as references to that authority.

(8) This Act does not apply to:

- (a) a member of the Parliament or a Minister of State;
- (b) a person who is a Judge as defined by section 4 of the *Judges' Pensions Act 1968*;
- (c) an officer or employee of the Public Service of an external Territory;
or
- (d) a seaman to whom the *Seamen's Compensation Act 1911* applies.

(9) A reference to an employee in a provision of this Act that applies to an employee at a time after the Commission or an administering authority has incurred a liability in relation to the employee under this Act includes, unless the contrary intention appears, a reference to a person who has ceased to be an employee.

(10) This Act does not apply in relation to service of a member of the Defence Force in respect of which provision for the payment of pension is made by:

- (a) the *Veterans' Entitlement Act 1986* (other than Part IV); or
- (b) the *Papua New Guinea (Members of the Forces Benefits) Act 1957*.

Injury arising out of or in the course of employment

6. (1) Without limiting the circumstances in which an injury to an employee may be treated as having arisen out of, or in the course of, his or her employment, an injury shall, for the purposes of this Act, be treated as having so arisen if it was sustained:

- (a) as a result of an act of violence that would not have occurred but for the employee's employment or the performance by the employee of the duties or functions of his or her employment; or
- (b) while the employee:
 - (i) was at his or her place of work, for the purposes of that employment, or was temporarily absent from that place during an ordinary recess in that employment;
 - (ii) was travelling between his or her place of residence and place of work, other than during an ordinary recess in that employment;
 - (iii) was travelling between the place where he or she normally resides and another place, being a place where he or she resides temporarily, as a matter of necessity or convenience, for the purposes of his or her employment;
 - (iv) was travelling between one of his or her places of work and another of his or her places of work;

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- (v) was travelling between his or her place of work or place of residence and a place of education for the purpose of attending that place in accordance with:
 - (A) a condition of his or her employment by the Commonwealth; or
 - (B) a request or direction of the Commonwealth;or for the purpose of attending that place with the approval of the Commonwealth, unless he or she was so travelling while on leave without pay;
- (vi) was at a place of education, except while on leave without pay, for a purpose referred to in subparagraph (v);
- (vii) was travelling between his or her place of work or place of residence and any other place for the purpose of:
 - (A) obtaining a medical certificate for the purposes of this Act;
 - (B) receiving medical treatment for an injury;
 - (C) undergoing a rehabilitation program provided under this Act;
 - (D) receiving a payment of compensation under this Act;
 - (E) undergoing a medical examination or rehabilitation assessment in accordance with a requirement made under this Act; or
 - (F) receiving money due to the employee under the terms of his or her employment, being money that, under the terms of that employment or any agreement or arrangement between the employee and the Commonwealth, is available, or reasonably expected by the employee to be available, for collection at that place; or
- (viii) was at a place for a purpose referred to in subparagraph (vii).

(2) Subparagraph (1) (b) (ii), (iii), (iv), (v) or (vii) does not apply where the travel:

- (a) was by a route that substantially increased the risk of sustaining an injury when compared with a more direct route; or
- (b) was interrupted in a way that substantially increased the risk of sustaining an injury.

(3) Subsection (1) does not apply where an employee sustains an injury while at a place referred to in that subsection if the employee sustained the injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury.

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Provisions relating to diseases

7. (1) Where:

- (a) an employee has suffered, or is suffering, from a disease or the death of an employee results from a disease;
- (b) the disease is of a kind specified by the Minister by notice in writing as a disease related to employment of a kind specified in the notice; and
- (c) the employee was, at any time before symptoms of the disease first became apparent, engaged by the Commonwealth in employment of that kind;

the employment in which the employee was so engaged shall, for the purposes of this Act, be taken to have contributed in a material degree to the contraction of the disease, unless the contrary is established.

(2) Where an employee contracts a disease, any employment in which he or she was engaged by the Commonwealth at any time before symptoms of the disease first became apparent shall, unless the contrary is established, be taken, for the purposes of this Act, to have contributed in a material degree to the contraction of the disease if the incidence of that disease among persons who have engaged in such employment is significantly greater than the incidence of the disease among persons who have engaged in other employment in the place where the employee is ordinarily employed.

(3) Where an employee suffers an aggravation of a disease, any employment in which he or she was engaged by the Commonwealth at any time before symptoms of the aggravation first became apparent shall, unless the contrary is established, be taken, for the purposes of this Act, to have contributed in a material degree to the aggravation if the incidence of the aggravation of that disease among persons suffering from it who have engaged in such employment is significantly greater than the incidence of the aggravation of that disease among persons suffering from it who have engaged in other employment in the place where the employee was ordinarily employed.

(4) For the purposes of this Act, an employee shall be taken to have sustained an injury, being a disease, or an aggravation of a disease, on the day when:

- (a) the employee first sought medical treatment for the disease, or aggravation; or
- (b) the disease or aggravation resulted in the death of the employee or first resulted in the incapacity for work, or impairment of the employee;

whichever happens first.

(5) The death of an employee shall be taken, for the purposes of this Act, to have resulted from a disease or an aggravation of a disease, if, but

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for that disease or aggravation, as the case may be, the death of the employee would have occurred at a significantly later time.

(6) An incapacity for work or impairment of an employee shall be taken, for the purposes of this Act, to have resulted from a disease, or an aggravation of a disease, if, but for that disease or aggravation, as the case may be:

- (a) the incapacity or impairment would not have occurred;
- (b) the incapacity would have commenced, or the impairment would have occurred, at a significantly later time; or
- (c) the extent of the incapacity or impairment would have been significantly less.

(7) A disease suffered by an employee, or an aggravation of such a disease, shall not be taken to be an injury to the employee for the purposes of this Act if the employee has at any time, for purposes connected with his or her employment or proposed employment by the Commonwealth, made a wilful and false representation that he or she did not suffer, or had not previously suffered, from that disease.

Normal weekly earnings

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

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

where:

- NH** is the average number of hours worked in each week by the employee in his or her employment during the relevant period;
- RP** is the employee's average hourly ordinary time rate of pay during that period; and
- A** is the average amount of any allowance payable to the employee in each week in respect of his or her employment during the relevant period, other than an allowance payable in respect of special expenses incurred, or likely to be incurred, by the employee in respect of that employment.

(2) Where an employee is required to work overtime on a regular basis, the normal weekly earnings of the employee before an injury shall be the amount calculated in accordance with subsection (1) plus an additional amount calculated in relation to the relevant period under the formula:

$$NH \times OR$$

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where:

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

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

(3) Where an employee was, at the date of the injury, employed by the Commonwealth in part-time employment, temporary employment or unpaid employment, any earnings of the employee from any other employment shall, for the purposes of this section, be treated as earnings of the employee from his or her employment by the Commonwealth.

(4) Where, because of the shortness of the relevant period, it is impracticable to calculate the normal weekly earnings of an employee before an injury under subsection (1) or (2), the normal weekly earnings of the employee before the date of injury shall be taken to be the normal weekly earnings before that date of another employee performing comparable work, being normal weekly earnings from employment by the Commonwealth and calculated under subsection (1) or (2), as the case requires.

(5) Where, because of the shortness of the relevant period, the normal weekly earnings as calculated in relation to the relevant period under subsection (1) or (2) would not fairly represent the weekly rate at which the employee was being paid in respect of his or her employment before the injury, the normal weekly earnings before the date of the injury shall be calculated in relation to such other period as the Commission considers reasonable for the purpose of arriving at an amount that does fairly represent the weekly rate at which the employee was being so paid.

(6) Subject to this section, if the minimum amount per week payable to an employee in respect of his or her employment by the Commonwealth at the date of the injury is increased, or would have been increased if the employee had continued in that employment, because of:

- (a) the attainment by the employee of a particular age;
- (b) the completion by the employee of a particular period of service;
or
- (c) the receipt by the employee of an increase in salary, wages or pay by way of an increment in a range of salary, wages or pay applicable to the employee or to his or her office, position or appointment;

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

(7) Subject to this section, if:

- (a) an employee continues to be employed by the Commonwealth after the date of an injury; and

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- (b) the minimum amount per week payable to the employee in respect of that employment is increased because of the promotion of the employee;

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

- (8) Subject to this section, where:

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

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

(9) If 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 is increased or reduced on or after that date 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 of the doing of any other act or thing, under such a law;

the normal weekly earnings of the employee before the injury, as calculated under the preceding subsections, shall be increased or reduced by the same percentage as the percentage by which that minimum amount was so increased or reduced, as the case may be.

(10) If the amount of the normal weekly earnings of an employee before an injury, as calculated under the preceding subsections, would exceed:

- (a) where the employee continues to be employed by the Commonwealth—the amount per week of the earnings that the employee would receive if he or she were not incapacitated for work; or
- (b) where the employee has ceased to be employed by the Commonwealth—whichever is the greater of the following amounts:
 - (i) the amount per week of the earnings that the employee would receive if he or she had continued to be employed by the Commonwealth in the employment in which he or she was engaged at the date of the injury;
 - (ii) the amount per week of the earnings that the employee would receive if he or she had continued to be employed by

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the Commonwealth in the employment in which he or she was engaged at the date on which the employment by the Commonwealth ceased;

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

Relevant period

9. (1) For the purposes of calculating the normal weekly earnings of an employee before an injury, a reference in section 8 to the relevant period is, subject to this section, a reference to the latest period of 2 weeks before the date of the injury during which the employee was continuously employed by the Commonwealth.

(2) Subject to subsection (3), if, during the period referred to in subsection (1), the minimum amount per week payable to an employee in respect of his or her employment by the Commonwealth was varied as a result of:

- (a)** the operation of a law of the Commonwealth or of a State or Territory; or
- (b)** the making, alteration or operation of an award, order, determination or industrial agreement, or the doing of any other act or thing, under such a law;

any part of that period that occurred before the variation, or last variation, took place shall be disregarded for the purposes of calculating the relevant period.

(3) Where in any case the application of subsection (2) would require that a period be disregarded for the purposes of calculating the relevant period in relation to an employee, and as a result of disregarding that period:

- (a)** it would be impracticable to calculate under section 8 the normal weekly earnings of the employee before an injury; or
- (b)** the normal weekly earnings as so calculated would not fairly represent the weekly rate at which the employee was being paid in respect of his or her employment by the Commonwealth before the injury;

subsection (2) shall not apply in that case, but the normal weekly earnings of the employee during that period shall be taken to be the amount that would have been his or her normal weekly earnings during that period if the variation had taken effect at the beginning of that period.

(4) If, during any part of the period calculated under the preceding subsections, the employee's earnings were reduced, or the employee did not receive any earnings, because of absence from his or her employment for any reason, that part of that period shall be disregarded for the purposes of calculating the relevant period.

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Recovery of damages

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

Liability of relevant authority

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

Amounts of compensation

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

Indexation

13. (1) In this section:

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

“relevant amount” means the amount specified in subsection 17 (3), (4) or (5), 18 (2), 19 (7), (8) or (9), 24 (9), 27 (2), 29 (1) or (3), 30 (1) or 137 (1);

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

(2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this section.

(3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard shall be had only to the index number published in terms of the new reference base.

(4) Where the factor ascertained under subsection (5) in relation to a relevant year is greater than one, this Act has effect as if for each relevant amount there were substituted, on the first day of that relevant year, an amount calculated by multiplying by that factor:

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- (a) if, by virtue of another application or other applications of this section, this Act has effect as if another amount or amounts were substituted for the relevant amount—the substituted amount or the last substituted amount; or
- (b) in any other case—the relevant amount.

(5) The factor to be ascertained for the purposes of subsection (4) in relation to a relevant year is the number (calculated to 3 decimal places) ascertained by dividing the index number of the December quarter immediately before the relevant year by the index number for the December quarter immediately before that first-mentioned December quarter.

(6) Where the factor ascertained under subsection (5) in relation to a relevant year would, if it were calculated to 4 decimal places, end with a number greater than 4, the factor ascertained under that subsection in relation to that relevant year shall be taken to be the factor calculated to 3 decimal places in accordance with that subsection and increased by 0.001.

PART II—COMPENSATION

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

Compensation for injuries

14. (1) Subject to this Part, the Commission is liable to pay compensation in accordance with this Act in respect of an injury suffered by an employee if the injury results in death, incapacity for work, or impairment.

(2) Compensation is not payable in respect of an injury that is intentionally self-inflicted.

(3) Compensation is not payable in respect of an injury that is caused by the serious and wilful misconduct of the employee but is not intentionally self-inflicted, unless the injury results in death, or serious and permanent impairment.

Compensation for loss of or damage to property used by employee

15. (1) If:

- (a) an employee has an accident arising out of and in the course of his or her employment by the Commonwealth; and
- (b) the accident does not cause injury to the employee but results in the loss of, or damage to, property used by the employee;

the Commission is liable to pay compensation to the employee of an amount equal to the amount of the expenditure reasonably incurred by the employee in the necessary replacement or repair of the property.

(2) For the purposes of subsection (1), expenditure incurred by an employee in the necessary replacement or repair of property used by the employee shall be taken to include any fees or charges paid or payable by

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the employee to a legally qualified medical practitioner or dentist or other qualified person for a consultation, examination, prescription or other service reasonably rendered in connection with the replacement or repair.

(3) Compensation is not payable under this section if the loss or damage is attributable to the serious and wilful misconduct of the employee.

Compensation in respect of medical expenses etc.

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

(2) Subsection (1) applies whether or not the injury results in death, incapacity for work, or impairment.

(3) For the purposes of subsection (1), the cost of medical treatment shall, in a case where the treatment involves the supply, replacement or repair of property used by the employee, be deemed to include any fees or charges paid or payable by the employee to a legally qualified medical practitioner or dentist or other qualified person for a consultation, examination, prescription or other service reasonably required in connection with that supply, replacement or repair.

(4) An amount of compensation payable by the Commission under subsection (1) is payable:

- (a) to, or in accordance with the directions of, the employee;
- (b) if the employee dies before the compensation is paid and without having paid the cost referred to in subsection (1) and another person, not being the legal personal representative of the employee, has paid that cost—to that other person; or
- (c) if that cost has not been paid and the employee, or the legal personal representative of the employee, does not make a claim for the compensation—to the person to whom that cost is payable.

(5) Where a person is liable to pay any cost referred to in subsection (1), any amount paid under subsection (4) to the person to whom that cost is payable is, to the extent of the payment, a discharge of the liability of the first-mentioned person.

(6) Subject to subsection (7), where compensation in respect of the cost of medical treatment is payable, the Commission is liable to pay compensation to the employee of an amount equal to the amount of the expenditure reasonably incurred by the employee in making a necessary journey for the purpose of obtaining that medical treatment or remaining, for the purpose of obtaining that medical treatment, at a place to which the employee has made a journey for that purpose.

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(7) The Commission is not liable to pay compensation under subsection (6) unless:

- (a) the journey covered a substantial distance; or
- (b) where the journey involved the use of public transport or ambulance services—the employee's injury reasonably required the use of such transport or services regardless of the distance involved.

(8) The matters to which the Commission shall have regard in deciding questions arising under subsections (6) and (7) include:

- (a) the place or places where appropriate medical treatment was available to the employee;
- (b) the means of transport available to the employee for the journey;
- (c) the route or routes by which the employee could have travelled; and
- (d) the accommodation available to the employee.

(9) Where:

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

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

Division 2—Injuries resulting in death

Compensation for injuries resulting in death

17. (1) This section applies where an injury to an employee results in death.

(2) Subject to this section and sections 16 and 18, if the employee dies without leaving dependants, compensation is not payable in respect of the injury.

(3) Subject to this section and to sections 16 and 18, if the employee dies leaving dependants some or all of whom were, at the date of the employee's death, wholly dependent on the employee, the Commission is liable to pay compensation in respect of the injury of \$120,000 and that compensation is payable to, or in accordance with the directions of, the Commission for the benefit of all of those dependants.

(4) If the employee dies without leaving dependants who were wholly dependent on the employee at the date of the employee's death but leaving dependants who were partly dependent on the employee at that date:

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- (a) subject to this section and to sections 16 and 18, the Commission is liable to pay compensation in respect of the injury of such amount, not exceeding \$120,000, as the Commission determines, having regard to any losses suffered by those dependants as a result of the cessation of the employee's earnings; and
- (b) that compensation is payable to, or in accordance with the directions of, the Commission for the benefit of those dependants.

(5) If:

- (a) a prescribed child was, at the date of the injury or at the date of the employee's death, wholly or mainly dependent on the employee;
- (b) a prescribed child, being a child of the employee, was born after the employee's death; or
- (c) a prescribed child would, if the employee had not died, have been wholly or mainly dependent on the employee;

the Commission is liable to pay compensation at the rate of \$40 a week and that compensation is payable to, or in accordance with the directions of, the Commission for the benefit of that child from the date of the employee's death or the date of the birth of the child, whichever is the later.

(6) Compensation is not payable under subsection (5) in respect of:

- (a) any period during which the child is not a prescribed child; and
- (b) in the case of a child referred to in paragraph (5) (c)—any period during which, if the employee had not died, the child would not have been wholly or mainly dependent upon the employee.

(7) An amount of compensation paid or payable under this Act before the death of an employee:

- (a) is not affected by subsection (2);
- (b) shall not be deducted from the compensation payable under subsection (3); and
- (c) shall not be taken into account in determining the compensation payable under subsection (4).

(8) Where an amount of compensation is payable under this section for the benefit of 2 or more dependants of the deceased employee, the Commission shall determine the shares of those dependants in that amount as the Commission thinks fit, having regard to any losses suffered by those dependants as a result of the cessation of the employee's earnings.

(9) A reference in this section to a dependant of a deceased employee shall be read as a reference to a dependant by or on behalf of whom a claim is made for compensation under this section.

(10) Where claims for compensation under this section are made by or on behalf of 2 or more dependants of a deceased employee, the Commission shall make one determination in respect of those claims.

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Compensation in respect of funeral expenses

18. (1) Where an injury to an employee results in death, the Commission is liable to pay compensation in respect of the cost of the employee's funeral to the person who paid the cost of the funeral or, if that cost has not been paid, to the person who carried out the funeral.

(2) The amount of compensation is such amount, not exceeding \$1,500, as the Commission considers reasonable, having regard to:

- (a)** the charges ordinarily made for funerals in the place where the funeral was carried out; and
- (b)** any amount paid or payable in respect of the cost of the funeral under any other law of the Commonwealth.

(3) Where a person is liable to pay the cost of the funeral of an employee, any amount paid under this section to the person who carried out the funeral is, to the extent of the payment, a discharge of the liability of the first-mentioned person.

Division 3—Injuries resulting in incapacity for work

Compensation for injuries resulting in incapacity

19. (1) This section applies to an employee who is incapacitated for work as a result of an injury, other than an employee to whom section 20, 21 or 22 applies.

(2) Subject to this Part, the Commission is liable to pay compensation to the employee in respect of the injury, for each of the first 45 weeks (whether consecutive or otherwise) during which the employee is incapacitated, of an amount calculated under the formula:

$$\text{NWE} - \text{AE}$$

where:

NWE is the amount of the employee's normal weekly earnings; and

AE is the amount per week (if any) that the employee is able to earn in suitable employment.

(3) Subject to this Part, the Commission is liable to pay 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), compensation:

- (a)** where the employee is not employed during that week—of an amount equal to 75% of his or her normal weekly earnings less the amount (if any) that he or she was able to earn during that week in suitable employment;
- (b)** where the employee is employed for 25% or less of his or her normal weekly hours during that week—of an amount that, when added to the amount of earnings payable to the employee for that employment, results in an amount equal to 80% of his or her normal weekly earnings;

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- (c) where the employee is employed for more than 25% but not more than 50% of his or her normal weekly hours during that week—of an amount that, when added to the amount of earnings payable to the employee for that employment, results in an amount equal to 85% of his or her normal weekly earnings;
 - (d) where the employee is employed for more than 50% but not more than 75% of his or her normal weekly hours during that week—of an amount that, when added to the amount of earnings payable to the employee for that employment, results in an amount equal to 90% of his or her normal weekly earnings;
 - (e) where the employee is employed for more than 75% but less than 100% of his or her normal weekly hours during that week—of an amount that, when added to the amount of earnings payable to the employee for that employment, results in an amount equal to 95% of his or her normal weekly earnings; and
 - (f) where the employee is employed for 100% of his or her normal weekly hours during that week—of an amount that, when added to the amount of earnings payable to the employee for that employment, results in an amount equal to 100% of his or her normal weekly earnings.
- (4) In determining, for the purposes of subsections (2) and (3), the amount per week that an employee is able to earn in suitable employment, the Commission shall have regard to:
- (a) where the employee is in employment—the amount per week that the employee is earning in that employment;
 - (b) where, after becoming incapacitated for work, the employee received an offer of suitable employment and failed to accept that offer—the amount per week that the employee would be earning in that employment if he or she were engaged in that employment;
 - (c) where, after becoming incapacitated for work, the employee received an offer of suitable employment and, having accepted that offer, failed to engage, or to continue to engage, in that employment—the amount per week that the employee would be earning in that employment if he or she were engaged in that employment;
 - (d) where, after becoming incapacitated for work, the employee received an offer of suitable employment on condition that the employee completed a reasonable rehabilitation or vocational retraining program and the employee failed to fulfil that condition—the amount that the employee would be earning in that employment if he or she were engaged in that employment;
 - (e) where, after becoming incapacitated for work, the employee has failed to seek suitable employment—the amount per week that, having regard to the state of the labour-market at the relevant time, the employee could reasonably be expected to earn in such employment if he or she were engaged in such employment;

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- (f) where paragraph (b), (c), (d) or (e) applies to the employee—whether the employee's failure to accept an offer of employment, to engage, or to continue to engage, in employment, to undertake, or to complete, a rehabilitation or vocational retraining program or to seek employment, as the case may be, was, in the Commission's opinion, reasonable in all the circumstances; and
- (g) any other matter that the Commission considers relevant.

(5) Where an amount of compensation calculated under subsection (3) exceeds 150% of the amount called the "Average Weekly Ordinary Time Earnings of Full-time Adults", as published from time to time by the Australian Statistician, the amount so calculated shall be reduced by an amount equal to the excess.

(6) Where an amount of compensation calculated under paragraph (3) (a) is less than the minimum earnings, the amount so calculated shall be increased by an amount equal to the difference between that amount and the minimum earnings.

(7) For the purposes of subsection (6), the minimum earnings of an employee shall be taken to be:

- (a) \$202, or, if subsection (8) or (9) applies in relation to the employee, the sum of \$202 and the amount or amounts required to be added under whichever of those subsections applies; or
- (b) an amount equal to 90% of the employee's normal weekly earnings; whichever is less.

(8) If there are prescribed persons wholly or mainly dependent on the employee, there shall be added to the amount of \$202 specified in paragraph (7) (a) the amount of \$50.

(9) If there are prescribed children in relation to whom this Act applies (whether born before, on or after the date of the injury) wholly or mainly dependent on the employee, there shall be added to the amount of \$202 specified in paragraph (7) (a) the amount of \$25 for each of those children, but an amount shall not be so added for a child in relation to any period before the date of birth of that child.

(10) If a prescribed child is:

- (a) a prescribed person in relation to the employee; and
- (b) the only prescribed person who is wholly or mainly dependent on the employee;

subsection (9) does not apply in relation to that child.

(11) If 2 or more prescribed children are each:

- (a) a prescribed person in relation to the employee; and
- (b) wholly or mainly dependent on the employee;

subsection (8) applies in relation to one of those children and subsection (9) applies in relation to the remainder of those children.

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(12) In this section, "prescribed person", in relation to an employee, means:

- (a) the spouse of the employee; or
- (b) any of the following persons, being a person who is 16 or more:
 - (i) the father, mother, step-father, step-mother, father-in-law, mother-in-law, grandfather, grandmother, son, daughter, step-son, step-daughter, grandson, granddaughter, brother, sister, half-brother or half-sister of the employee;
 - (ii) a person in relation to whom the employee stands in the position of a parent or who stands in the position of a parent to the employee;
 - (iii) a person (other than the spouse of the employee or a person referred to in subparagraph (i) or (ii)) who is wholly or mainly maintained by the employee and has the care of a prescribed child, being a child who is wholly or mainly dependent on the employee.

(13) For the purposes of the definition of "prescribed person" in subsection (12), relationships referred to in that definition shall be taken to include illegitimate relationships and relationships by adoption and relationships that are traced through illegitimate relationships or relationships by adoption.

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

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

20. (1) This section applies to an employee who, being incapacitated for work as a result of an injury, retires voluntarily, or is compulsorily retired, from his or her employment at any time after the commencement of this section and, as a result of the retirement, receives a pension under a superannuation scheme.

(2) The Commission is liable to pay compensation to the employee, in respect of the injury, in accordance with this section for each week after the date of the retirement during which the employee is incapacitated.

(3) The amount of compensation is an amount calculated under the formula:

$$AC - (SA + SC)$$

where:

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

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- (a) section 19, other than subsection 19 (6), had applied to the employee; and
- (b) the week were a week referred to in subsection 19 (3);

SA is the superannuation amount; and

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

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

21. (1) This section applies to an employee who, being incapacitated for work as a result of an injury retires voluntarily, or is compulsorily retired, from his or her employment at any time after the commencement of this section and, as a result of the retirement, receives a lump sum benefit under a superannuation scheme.

(2) The Commission is liable to pay compensation to the employee, in respect of the injury, in accordance with this section for each week after the date of the retirement during which the employee is incapacitated.

(3) The amount of compensation is an amount calculated under the formula:

$$AC - \left(\frac{SA}{520} + SC \right)$$

where:

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

- (a) section 19, other than subsection 19 (6), had applied to the employee; and
- (b) the week were a week referred to in subsection 19 (3);

SA is the superannuation amount; and

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

Compensation where employee is maintained in a hospital

22. (1) Where:

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

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

(c) the present and probable future needs and expenses of the employee; and

(d) the period during which the employee is likely to be such a patient; but the amount so determined shall not be less than one-half of, nor more than, the amount per week of compensation that would have been payable to the employee under section 19, 20 or 21, as the case requires, had that section applied to the employee.

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

Compensation for incapacity not payable in certain cases

23. (1) Compensation is not payable under section 19, 20, 21 or 22 to a person who has reached 65.

(2) Compensation is not payable under section 19, 20 or 21 in respect of any period during which the employee is imprisoned in connection with his or her conviction of an offence.

(3) Subject to section 31, where a determination is made that an amount of compensation is payable to an employee under section 30 in respect of an injury, compensation is not payable to the employee under section 19, 20 or 21 in respect of a period of incapacity for work resulting from that injury, being a period occurring after the day on which the determination is made.

Division 4—Injuries resulting in impairment

Compensation for injuries resulting in permanent impairment

24. (1) Where an injury to an employee results in a permanent impairment, the Commission is liable to pay compensation to the employee in respect of the injury.

(2) For the purpose of determining whether an impairment is permanent, the Commission shall have regard to:

(a) the duration of the impairment;

(b) the likelihood of improvement in the employee's condition;

(c) whether the employee has undertaken all reasonable rehabilitative treatment for the impairment; and

(d) any other relevant matters.

(3) Subject to this section, the amount of compensation payable to the employee is such amount, as is assessed by the Commission under subsection (4), being an amount not exceeding the maximum amount at the date of the assessment.

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(4) The amount assessed by the Commission shall be an amount that is the same percentage of the maximum amount as the percentage determined by the Commission under subsection (5).

(5) The Commission shall determine the degree of permanent impairment of the employee resulting from an injury under the provisions of the approved Guide.

(6) The degree of permanent impairment shall be expressed as a percentage.

(7) Subject to section 25, where the Commission determines that the degree of permanent impairment of the employee is less than 10%, an amount of compensation is not payable to the employee under this section.

(8) Subsection (7) does not apply in relation to an impairment resulting from the loss, or injury to, a finger or toe.

(9) For the purposes of this section, the maximum amount is \$80,000.

Interim payment of compensation

25. (1) Where the Commission:

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

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

(2) The amount assessed by the Commission under subsection (1) shall be an amount that is the same percentage of the maximum amount specified in subsection 24 (9) as the percentage determined by the Commission under subsection (1) to be the degree of permanent impairment of the employee.

(3) Where, after an amount of compensation has been paid to an employee following the making of an interim determination, the Commission makes a final determination of the degree of permanent impairment of the employee, there is payable to the employee an amount equal to the difference (if any) between the amount payable under section 24 on the making of the final determination and the amount paid to the employee under this section.

(4) Where the Commission has made a final assessment of the degree of permanent impairment of an employee, no further amounts of compensation shall be payable to the employee in respect of a subsequent increase in the degree of impairment, unless the increase is 10% or more.

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Payment of compensation

26. (1) Subject to this section, an amount of compensation payable to an employee under section 24 or 25, shall be paid to the employee within 30 days after the date of the assessment of the amount.

(2) Where an amount of compensation is not paid to an employee in accordance with subsection (1), interest is payable to the employee on that amount in respect of the period commencing on the expiration of the period of 30 days referred to in that subsection and ending on the day on which the amount is paid.

(3) Interest payable under subsection (2) shall be paid at such rate as is from time to time specified by the Minister for the purposes of this section by notice in writing.

(4) This section does not apply where:

- (a) the Commission has been requested under Part VI to reconsider a determination under section 24 or 25, as the case may be; or
- (b) a proceeding in respect of such a determination has been instituted under Part VI.

Compensation for non-economic loss

27. (1) Where an injury to an employee results in a permanent impairment and compensation is payable in respect of the injury under section 24, the Commission is liable to pay additional compensation in accordance with this section to the employee in respect of that injury for any non-economic loss suffered by the employee as a result of that injury or impairment.

(2) The amount of compensation is an amount assessed by the Commission under the formula:

$$(\$15,000 \times A) + (\$15,000 \times B)$$

where:

- A** is the percentage finally determined by the Commission under section 24 to be the degree of permanent impairment of the employee; and
- B** is the percentage determined by the Commission under the approved Guide to be the degree of non-economic loss suffered by the employee.

Approved Guide

28. (1) The Commission may, from time to time, prepare a written document, to be called the "Guide to the Assessment of the Degree of Permanent Impairment", setting out:

- (a) criteria by reference to which the degree of the permanent impairment of an employee resulting from an injury shall be determined;
- (b) criteria by reference to which the degree of non-economic loss suffered by an employee as a result of an injury or impairment shall be determined; and

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- (c) methods by which the degree of permanent impairment and the degree of non-economic loss, as determined under those criteria, shall be expressed as a percentage.
- (2) The Commission may, from time to time, by instrument in writing, vary or revoke the approved Guide.
- (3) A document prepared by the Commission under subsection (1), and an instrument under subsection (2), have no force or effect unless and until approved by the Minister.
- (4) Where the Commission, an administering authority or the Administrative Appeals Tribunal is required to assess or re-assess, or review the assessment or re-assessment of, the degree of permanent impairment of an employee resulting from an injury, or the degree of non-economic loss suffered by an employee, the provisions of the approved Guide are binding on the Commission, the administering authority or the Administrative Appeals Tribunal, as the case may be, in the carrying out of that assessment, re-assessment or review, and the assessment, re-assessment or review shall be made under the relevant provisions of the approved Guide.
- (5) The percentage of permanent impairment or non-economic loss suffered by an employee as a result of an injury ascertained under the methods referred to in paragraph (1) (c) may be 0%.
- (6) In preparing criteria for the purposes of paragraphs (1) (a) and (b), or in varying those criteria, the Commission shall have regard to medical opinion concerning the nature and effect (including possible effect) of the injury and the extent (if any) to which impairment resulting from the injury, or non-economic loss resulting from the injury or impairment, may reasonably be capable of being reduced or removed.
- (7) When a document prepared by the Commission in accordance with subsection (1), or an instrument under subsection (2), has been approved by the Minister, the Commission shall cause copies of the document or instrument, as the case may be, to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives those copies.
- (8) The Commission shall make copies of the "Guide to the Assessment of the Degree of Permanent Impairment" that has been approved by the Minister, and of any variation of that Guide that has been so approved, available upon application by a person and payment of the prescribed fee (if any).
- (9) Sections 48 (other than paragraphs (1) (a) and (b) and subsection (2)), 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to a document, being the approved Guide or an instrument varying or revoking that Guide that has been approved by the Minister, as if, in those sections, references to regulations were references to such a document and references to a regulation were references to a provision of such a document.

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(10) For the purpose of the application of the provisions of the *Acts Interpretation Act 1901* in accordance with subsection (9), a document referred to in that subsection shall be taken to have been made on the date on which it was approved by the Minister under this section.

Division 5—Household and attendant care services

Compensation for household services and attendant care services

29. (1) Subject to subsection (5), where, as a result of an injury to an employee, the employee obtains household services that he or she reasonably requires, the Commission is liable to pay compensation of such amount per week as the Commission considers reasonable in the circumstances, being not less than 50% of the amount per week paid or payable by the employee for those services nor more than \$200.

(2) Without limiting the matters that the Commission may take into account in determining the household services that are reasonably required in a particular case, the Commission shall, in making such a determination, have regard to the following matters:

- (a) the extent to which household services were provided by the employee before the date of the injury and the extent to which he or she is able to provide those services after that date;
- (b) the number of persons living with the employee as members of his or her household, their ages and their need for household services;
- (c) the extent to which household services were provided by the persons referred to in paragraph (b) before the injury;
- (d) the extent to which the persons referred to in paragraph (b), or any other members of the employee's family, might reasonably be expected to provide household services for themselves and for the employee after the injury;
- (e) the need to avoid substantial disruption to the employment or other activities of the persons referred to in paragraph (b).

(3) Where, as a result of an injury to an employee, the employee obtains attendant care services that he or she reasonably requires, the Commission is liable to pay compensation of:

- (a) \$200 per week; or
- (b) an amount per week equal to the amount per week paid or payable by the employee for those services;

whichever is less.

(4) Without limiting the matters that the Commission may take into account in determining the attendant care services that are reasonably required in a particular case, the Commission shall, in making such a determination, have regard to the following matters:

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- (a) the nature of the employee's injury and the degree to which that injury impairs his or her ability to provide for his or her personal care;
- (b) the extent to which any medical service or nursing care received by the employee provides for his or her essential and regular personal care;
- (c) the extent to which it is reasonable to meet any wish by the employee to live outside an institution;
- (d) the extent to which attendant care services are necessary to enable the employee to undertake or continue employment;
- (e) any assessment made in relation to the rehabilitation of the employee;
- (f) the extent to which a relative of the employee might reasonably be expected to provide attendant care services.

(5) The Commission is not liable to pay compensation under subsection (1) in respect of any week within the period of 28 days beginning on the date of the injury unless the Commission determines otherwise in a particular case on the ground of financial hardship or the need to provide for adequate supervision of dependent children.

(6) An amount of compensation payable by the Commission under subsection (1) or (3) is payable:

- (a) where the employee has paid for the household services or attendant care services, as the case may be—to the employee; or
- (b) in any other case—to the person who provided those services.

(7) Where the Commission pays an amount to a person who provided household services or attendant care services to an employee, the payment of the amount is, to the extent of the payment, a discharge of the liability of the employee to pay for those services.

Division 6—Miscellaneous

Redemption of compensation

30. (1) Where:

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

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

(2) The amount of the lump sum is the amount calculated under the formula:

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$$\frac{(\text{AW} \times \text{ND})}{7} - \text{SR} \times \frac{(\text{AW} \times \text{ND})}{7}$$

where:

- AW** is the amount per week payable to the employee under section 19, 20 or 21, as the case may be, at the date of the determination;
- ND** is the number of days between the date of the determination and the day on which the employee reaches 65; and
- SR** is the specified rate applicable at the date of the determination.

(3) The Minister may, from time to time, by notice in writing, specify a rate for the purposes of subsection (2).

Recurrent payments after payment of lump sum

31. (1) Where:

- (a) at any time after a lump sum is paid to an employee under section 30 in respect of an injury, the injury results in the employee being incapacitated for work to the extent that the employee is not able to engage in suitable employment; and
- (b) the incapacity is likely to continue indefinitely;

the Commission is liable to pay compensation to the employee under this section during the period of the incapacity.

(2) The amount of compensation is an amount per week equal to the amount per week that would, but for the payment of the lump sum, have been payable to the employee under section 19, 20 or 21, as the case may be, in respect of the incapacity, less the amount per week that was redeemed at the date of the determination under section 30.

Cancelled determinations not to affect certain payments of compensation

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

- (a) is revoked by the Commission; or
- (b) is set aside by a tribunal or court.

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

Reduction of compensation in certain cases

33. (1) Where, in relation to a day in respect of which compensation is payable to an employee under section 19, 20, 21, 22 or 31, an amount or amounts are paid or payable to the employee by the Commonwealth by way of salary, wages or pay, the amount of compensation payable under

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that section in respect of that day shall be reduced by the amount, or the sum of the amounts, so paid or payable to the employee.

(2) In this section, a reference to an amount paid or payable to an employee by the Commonwealth does not include a reference to:

- (a) an amount by way of pay in respect of a period of leave of absence granted, or in lieu of the grant of a period of leave of absence, under section 16 or 17 of the *Long Service Leave (Commonwealth Employees) Act 1976*, section 73 or 74 of the *Public Service Act 1922* as in force before 20 December 1976 or section 7 or 8 of the *Commonwealth Employees' Furlough Act 1943* as in force before that day;
- (b) an amount by way of pay in respect of a period of leave of absence granted, or in lieu of the grant of a period of leave of absence, under regulations in force under the *Naval Defence Act 1910*, the *Defence Act 1903* or the *Air Force Act 1923*;
- (c) any amount that the employee is able to earn in suitable employment or any amount of earnings payable to an employee, being an amount that has been taken into account for the purposes of calculating the amount of compensation payable to the employee under section 19; or
- (d) an amount of deferred pay within the meaning of Part III of the *Defence Forces Retirement Benefits Act 1959* or of any provision of that Part.

PART III—REHABILITATION

Approved rehabilitation program providers

34. (1) The Commission may, by instrument in writing, approve, for the purposes of this Act, a person who provides rehabilitation programs.

(2) An administering authority may, by instrument in writing, approve, for the purposes of this Act and in relation to its employees only, a person who provides rehabilitation programs.

(3) The Commission or an administering authority may approve a person either on its own motion or on request by the person.

(4) The matters to which the Commission or an administering authority shall have regard in deciding whether to approve a person include:

- (a) the qualifications of the person and the person's employees; and
- (b) the effectiveness, availability and cost of the rehabilitation programs provided by the person.

Exempt authorities

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

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Assessment of capability of undertaking rehabilitation program

36. (1) Where an employee suffers an injury resulting in an incapacity for work or an impairment, the rehabilitation authority may at any time, and shall on the written request of the employee, arrange for the assessment of the employee's capability of undertaking a rehabilitation program.

(2) An assessment shall be made by:

- (a)** a legally qualified medical practitioner nominated by the rehabilitation authority;
- (b)** a suitably qualified person (other than a medical practitioner) nominated by the rehabilitation authority; or
- (c)** a panel comprising such legally qualified medical practitioners or other suitably qualified persons (or both) as are nominated by the rehabilitation authority.

(3) The rehabilitation authority may require the employee to undergo an examination by the person or panel of persons making the assessment.

(4) Where an employee refuses or fails, without reasonable excuse, to undergo an examination in accordance with a requirement, or in any way obstructs such an examination, the employee's rights to compensation under this Act, and to institute or continue any proceedings under this Act in relation to compensation, are suspended until the examination takes place.

(5) The relevant authority shall pay the cost of conducting any examination of an employee and is liable to pay to the employee an amount equal to the amount of the expenditure reasonably incurred by the employee in making a necessary journey in connection with the examination or remaining, for the purpose of the examination, at a place to which the employee has made a journey for that purpose.

(6) In deciding questions arising under subsection (5), a relevant authority shall have regard to:

- (a)** the means of transport available to the employee for the journey;
- (b)** the route or routes by which the employee could have travelled; and
- (c)** the accommodation available to the employee.

(7) Where an employee's right to compensation is suspended under subsection (4), compensation is not payable in respect of the period of the suspension.

(8) Where an examination is carried out, the person or persons who carried out the examination shall give to the rehabilitation authority a written assessment of the employee's capability of undertaking a rehabilitation program, specifying, where appropriate, the kind of program which he or she is capable of undertaking and containing any other information relating to the provision of a rehabilitation program for the employee that the rehabilitation authority may require.

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Provision of rehabilitation programs

37. (1) A rehabilitation authority may make a determination that an employee who has suffered an injury resulting in an incapacity for work or an impairment should undertake a rehabilitation program and, where the authority so determines, it may make arrangements with an approved program provider for the provision of a rehabilitation program for the employee.

(2) A rehabilitation authority (other than an administering authority) shall not make arrangements with an approved program provider who is not approved by the Commission under section 34.

(3) In making a determination under subsection (1), a rehabilitation authority shall have regard to:

- (a)** any written assessment given under subsection 36 (8);
- (b)** any reduction in the future liability to pay compensation if the program is undertaken;
- (c)** the cost of the program;
- (d)** any improvement in the employee's opportunity to be employed after completing the program;
- (e)** the likely psychological effect on the employee of not providing the program;
- (f)** the employee's attitude to the program;
- (g)** the relative merits of any alternative and appropriate rehabilitation program; and
- (h)** any other relevant matter.

(4) The cost of any rehabilitation program provided for an employee under this section shall be paid by the relevant authority in relation to that employee.

(5) Where an employee is undertaking a rehabilitation program under this section, compensation is not payable to the employee under section 19 or 31 but:

- (a)** if the employee is undertaking a full-time program—compensation is payable to the person of an amount per week equal to the amount per week of the compensation that would, but for this subsection, have been payable under section 19 if the incapacity referred to in that section had continued throughout the period of the program; or
- (b)** if the employee is undertaking a part-time program—compensation is payable to the employee of such amount per week as the relevant authority determines, being an amount not less than the amount per week of the compensation that, but for this subsection, would have been payable to the employee under this Act and not greater than the amount per week of the compensation that would have been

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payable under paragraph (a) if the employee had been undertaking a full-time program.

(6) An employee who is entitled to receive compensation under subsection (5) during a period is not entitled to receive an amount under Part XVI of the *Social Security Act 1947* during that period.

(7) Where an employee refuses or fails, without reasonable excuse, to undertake a rehabilitation program provided for the employee under this section, the employee's rights to compensation under this Act, and to institute or continue any proceedings under this Act in relation to compensation, are suspended until the employee begins to undertake the program.

(8) Where an employee's right to compensation is suspended under subsection (7), compensation is not payable in respect of the period of the suspension.

Review of certain determinations by Commission

38. (1) As soon as practicable after a rehabilitation authority (other than a relevant authority) makes a determination under section 36 or 37, the authority shall cause to be served on the employee to whom the determination relates a notice in writing setting out:

- (a) the terms of the determination;
- (b) the reasons for the determination; and
- (c) a statement to the effect that the employee may, if dissatisfied with the determination, request the Commission for a review of the determination under this section.

(2) An employee in respect of whom a determination under section 36 or 37 is made by a rehabilitation authority (other than a relevant authority) may, by notice in writing given to the Commission, request the Commission to review the determination.

(3) A request shall:

- (a) set out the reasons for the request; and
- (b) be given to the Commission within 30 days after the day on which the determination first came to the notice of the employee, or within such further period (if any) as the Commission, either before or after the expiration of that period, allows.

(4) On receipt of a request, the Commission shall review the determination and may make a decision affirming or revoking the determination or varying the determination in such manner as the Commission thinks fit.

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Compensation payable in respect of certain alterations etc.

39. (1) Where:

- (a) an employee suffers an injury resulting in an impairment; and
- (b) the employee is undertaking, or has completed, a rehabilitation program or has been assessed as not capable of undertaking such a program;

the relevant authority is liable to pay compensation of such amount as is reasonable in respect of the costs, payable by the employee, of:

- (c) any alteration of the employee's place of residence or place of work;
- (d) any modifications of a vehicle or article used by the employee; or
- (e) any aids or appliances for the use of the employee, or the repair or replacement of such aids or appliances;

being alterations, modifications or aids or appliances reasonably required by the employee, having regard to the nature of the employee's impairment and, where appropriate, the requirements of the rehabilitation program.

(2) The matters to which the relevant authority shall have regard in determining the amount of compensation payable in a particular case under subsection (1) include such of the following matters as are relevant in that case:

- (a) the likely period during which the alteration, modification, aid or appliance will be required;
- (b) any difficulties faced by the employee in gaining access to, or enjoying reasonable freedom of movement in, his or her place of residence or work;
- (c) any difficulties faced by the employee in gaining access to, driving or enjoying freedom and safety of movement in, a vehicle used by the employee;
- (d) any alternative means of transport available to the employee;
- (e) whether arrangements can be made for hiring the relevant aid or appliance;
- (f) when the employee has previously received compensation under this section in respect of an alteration of his or her place of residence or a modification of a vehicle and has later disposed of that place of residence or vehicle—whether the value of that place of residence or vehicle was increased as a result of the alteration or modification.

(3) An amount of compensation payable under this section is payable:

- (a) to, or in accordance with the directions of, the employee;
- (b) if the employee dies before the compensation is paid and without having paid the cost referred to in subsection (1) and another person, not being the legal personal representative of the employee, has paid that cost—to that other person; or
- (c) if that cost has not been paid and the employee, or the legal personal representative of the employee, is unable, or refuses or

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fails, to make a claim for the compensation—to the person to whom that cost is payable.

(4) Where a person is liable to pay any cost referred to in subsection (1), any amount paid under subsection (3) to the person to whom that cost is payable is, to the extent of the payment, a discharge of the liability of the first-mentioned person.

Duty to provide suitable employment

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

(2) In this section:

“relevant employer” means:

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

Rehabilitation authorities to comply with guidelines

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

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

PART IV—LIABILITIES ARISING APART FROM THIS ACT

Interpretation

42. In this Part:

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

Certain persons may request cessation of compensation payments

43. (1) Where compensation under this Act is payable to, or for the benefit of, a person who is a member of the Forces for the purposes of Part IV of the *Veterans' Entitlements Act 1986*, or a dependant of such a member, the person may, by notice in writing to the Commission, request

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that an amount of compensation under this Act to which the person is, or may become, entitled be not paid to, or for the benefit of, the person.

(2) Where the Commission receives a request by a person:

- (a) an amount of compensation under this Act that is payable to, or for the benefit of, the person at the time of that receipt, being an amount to which the request relates, ceases to be so payable; and
- (b) an amount of compensation under this Act that would, but for this section, become payable to, or for the benefit of, that person during the period when the request is in force, being an amount to which the request relates, does not become payable.

(3) A person who has made a request may, by notice in writing to the Commission, revoke the request.

(4) The revocation of a request:

- (a) has effect on the receipt of the notice of revocation by the Commission; and
- (b) does not revive any entitlement to an amount of compensation that had ceased to be payable, or had not become payable, as a result of the making of the request.

(5) A person who is under a legal disability may not make or revoke a request but a request may be made or revoked on his or her behalf by another person who the Commission is satisfied represents the first-mentioned person's interests.

(6) A request or revocation made on behalf of a person under a legal disability shall, for the purposes of this section, be taken to have been made by that person.

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

44. (1) Subject to section 45, an action or other proceeding for damages does not lie against the Commonwealth, a Commonwealth authority or an employee in respect of:

- (a) an injury sustained by an employee in the course of his or her employment, being an injury in respect of which the Commonwealth or Commonwealth authority would, but for this subsection, be liable (whether vicariously or otherwise) for damages; or
- (b) the loss of, or damage to, property used by an employee resulting from such an injury;

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

(2) Subsection (1) does not apply in relation to an action or proceeding instituted before the commencement of this section.

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Actions for damages—election by employees

45. (1) Where:

- (a) compensation is payable under section 24, 25 or 27 in respect of an injury to an employee; and
- (b) the Commonwealth, a Commonwealth authority or another employee would, but for subsection 44 (1), be liable for damages for any non-economic loss suffered by the employee as a result of the injury;

the employee may, at any time before an amount of compensation is paid to the employee under section 24, 25 or 27 in respect of that injury, elect in writing to institute an action or proceeding against the Commonwealth, the Commonwealth authority or other employee for damages for that non-economic loss.

(2) Where an employee makes an election:

- (a) subsection 44 (1) does not apply in relation to an action or other proceeding subsequently instituted by the employee against the Commonwealth, the Commonwealth authority or the other employee for damages for the non-economic loss to which the election relates; and
- (b) compensation is not payable after the date of the election under section 24, 25 or 27 in respect of the injury.

(3) An election is irrevocable.

(4) In any action or proceeding instituted as a result of an election made by an employee, the court shall not award the employee damages of an amount exceeding \$110,000 for any non-economic loss suffered by the employee.

Notice of proceedings against third party

46. Where:

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

the employee or dependant shall, as soon as practicable but in any event not later than 7 days after the day on which he or she first became aware that those proceedings had been instituted, notify the Commission in writing of those proceedings.

Penalty: \$500.

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Notice of proceedings against Commonwealth

47. Where:

- (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, institutes proceedings against the Commonwealth, a Commonwealth authority or another employee for the recovery of damages in respect of the death or injury;

the employee or dependant shall, as soon as practicable but in any event not later than 7 days after the day on which he or she first became aware that those proceedings had been instituted, notify the Commission in writing of those proceedings.

Penalty: \$500.

Compensation not payable where damages recovered

48. (1) This section applies where:

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

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

Penalty: \$1,000.

(3) If, before the recovery of the damages by, or for the benefit of, the employee or dependant, any compensation under this Act was paid to the employee in respect of the injury, loss or damage, or to, or for the benefit of, the dependant in respect of the injury that resulted in the death of the employee, as the case may be, the employee or dependant is liable to pay to the Commission an amount equal to:

- (a) the amount of that compensation; or
- (b) the amount of the damages;

whichever is less.

(4) Compensation is not payable under this Act to the employee in respect of the injury, loss or damage, or to, or for the benefit of, the dependant in respect of the injury that resulted in the death of the employee, after the date on which the damages were recovered by the employee or by, or for the benefit of, the dependant, as the case may be.

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- (5) Subsection (4) does not apply where the damages were recovered:
- (a) as a result of proceedings, or fresh proceedings, instituted by the Commission under section 50;
 - (b) as a result of proceedings the conduct of which is taken over by the Commission under that section;
 - (c) as a result of proceedings instituted by the employee as a result of an election by the employee under section 45; or
 - (d) by way of a settlement of those proceedings.

(6) A reference in subsection (3) to compensation under this Act that was paid for the benefit of a dependant does not include a reference to compensation paid under subsection 17 (5).

(7) Where an employee, or a dependant of an employee, establishes to the satisfaction of the Commission that a part of the damages referred to in subsection (1) did not relate to an injury, loss or damage in respect of which compensation is payable under this Act, subsection (3) applies in relation to that employee or dependant as if the amount of the damages were an amount equal to so much of the amount of the damages as did relate to an injury, loss or damage in respect of which compensation is payable under this Act.

(8) Subsections (3) and (4) do not apply where the damages are recovered on or after the commencement of this section in respect of a claim for damages made before that day (whether or not legal proceedings were instituted) but section 99 (other than subsection 99 (1)) of the 1971 Act, as in force immediately before that day, continues to apply as if:

- (a) references in that section to the Commonwealth were references to the Commission;
- (b) references in that section to the Commissioner were references to the Commission;
- (c) references in that section to compensation payable under the 1971 Act were references to compensation payable under this Act; and
- (d) the reference in subsection 99 (9) to subsection 43 (5) or (7) of the 1971 Act were a reference to subsection 17 (5) of this Act.

(9) In this section, "damages" does not include an amount of damages paid to the Commonwealth in accordance with section 76 of the *Veterans' Entitlements Act 1986*.

Dependants not claiming compensation

49. (1) Where:

- (a) compensation is payable under this Act in respect of an injury that resulted in the death of an employee; and
- (b) damages in respect of the death of the employee are recovered by or for the benefit of a prescribed dependant of the deceased employee;

this section applies in relation to that prescribed dependant.

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(2) If the prescribed dependant is the only prescribed dependant, he or she is liable to pay to the Commission:

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

(b) the amount of the damages recovered by the prescribed dependant;
whichever is less.

(3) If the prescribed dependant is not the only prescribed dependant, he or she is liable to pay to the Commission:

(a) the prescribed amount; or

(b) the amount of the damages recovered by the prescribed dependant;
whichever is less.

(4) In this section:

“damages” has the same meaning as in section 48;

“prescribed amount” means an amount calculated under the formula:

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

where:

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

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

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

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

(5) For the purposes of this section, the amount of the compensation referred to in paragraph (1) (a):

(a) shall be taken not to include:

(i) any amount of compensation that the Commission is liable to pay for the benefit of a dependant of the deceased employee, being a dependant who is not entitled to recover damages in respect of the death of the employee, whether by reason of the operation of a statute of limitations or otherwise; and

(ii) any amount of compensation payable under subsection 17 (5);
and

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- (b) shall be taken to be reduced by any amount that a dependant of the deceased employee is liable to pay to the Commission under section 48.

Proceedings against third parties

50. (1) Where:

- (a) an amount of compensation under this Act:
 - (i) is paid to an employee in respect of an injury to the employee or in respect of the loss of, or damage to, property used by the employee; or
 - (ii) is paid for the benefit of a dependant of a deceased employee in respect of an injury that resulted in the death of the employee;
- (b) the injury, loss, damage or death occurred in circumstances that appear to create a legal liability in a person to pay damages in respect of the injury, loss, damage or death; and
- (c) proceedings against that person for the purpose of recovering such damages have not been instituted by the employee or by or for the benefit of the dependant, or have been so instituted but have been discontinued or have not been properly prosecuted;

the Commission may institute proceedings or fresh proceedings 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 proceedings, as the case requires.

(2) The Commission is liable to pay all costs of or incidental to any proceedings taken over by it, being costs payable by the plaintiff in those proceedings, other than costs unreasonably incurred by the plaintiff.

(3) Where the Commission institutes, or takes over the conduct of, proceedings under this section, the Commission may:

- (a) settle the proceedings, either with or without obtaining judgment; and
- (b) if a judgment is obtained in the proceedings in favour of the plaintiff—take such steps as are necessary to enforce the judgment.

(4) The employee or dependant shall sign any document relevant to proceedings instituted or taken over by the Commission under this section (including the settlement of the proceedings), being a document that the Commission requires the employee or dependant to sign and, if he or she fails to sign any such document, the court or tribunal in which the proceedings are taken may direct that the document be signed on his or her behalf by a person appointed by the Commission for the purpose.

(5) Where the Commission institutes, or takes over the conduct of, proceedings under this section, the employee or dependant shall comply with any reasonable requirement of the Commission for the purpose of the

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proceedings and, where the employee or dependant fails to comply with any such 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 proceedings relate is suspended until such time as the employee or dependant complies with that requirement.

(6) Where a right to compensation is suspended under subsection (5), compensation is not payable in respect of the period of the suspension.

(7) Any damages awarded under a judgment obtained in proceedings referred to in this section, or payable as a result of the settlement of such proceedings, shall be paid to the Commission and the Commission shall 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 proceedings relate; and
- (b) the amount of any costs of or incidental to those proceedings paid by the Commission;

and shall pay the balance (if any) to the employee or dependant.

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

(9) In this section:

“person” does not include the Commonwealth, a Commonwealth authority or an employee.

Payment of damages by persons to Commission

51. (1) Where a person appears to be liable:

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

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

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

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

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

(a) a person has agreed:

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

(b) damages against a person have been awarded:

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

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

(3) Where, before a notice under subsection (2) was received by a person, the person had paid to or in respect of the employee or dependant, all or part of the damages to which the notice related:

- (a) if all of the damages had been paid—the notice has no force or effect; or
- (b) if part only of the damages had been paid—the reference in that subsection to the amount of the damages shall be read as a reference to so much of that amount as had not been paid.

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(4) If a person fails to pay an amount to the Commission in accordance with a notice under this section, the Commission may recover that amount from the person in a court of competent jurisdiction as a debt due to the Commission.

(5) The payment of an amount to the Commission by a person in accordance with a notice under this section is, to the extent of the amount paid, a discharge of the liability of that person to the employee or dependant and of the liability (if any) of the employee or dependant to the Commission under section 48 or 49.

(6) In this section:

“person” does not include the Commonwealth, a Commonwealth authority or an employee.

Compensation not payable both under Act and under award

52. (1) A person who would, but for this section, be entitled to compensation under this Act and benefits under an award in respect of the same injury, or in respect of the same loss of, or damage to, property, is not entitled to both but shall elect whether to receive the compensation or the benefits.

(2) An election made by an employee is irrevocable.

(3) Where an employee makes an election to receive either compensation under this Act or benefits under the award but compensation is not payable under this Act, or benefits are not payable under the award, as the case may be, in respect of the injury, or the loss of, or damage to, property, the election has no effect.

(4) Where an employee has made an election to receive compensation under this Act, that compensation is not payable unless the employee makes a claim under section 54.

(5) Where an employee who has made an election dies, the election does not have effect in relation to his or her dependants.

(6) In this section, “award” means an award, determination or order by which provision is made for, or in relation to, the grant of any benefits to or in relation to employees or their dependants in respect of injury or disease causing death or incapacity, or in respect of the loss of, or damage to, property, in circumstances connected with the employment of those employees, being:

(a) a determination made under the *Public Service Arbitration Act 1920*; or

(b) an award or order made under a law of the Commonwealth relating to conciliation and arbitration.

PART V—CLAIMS FOR COMPENSATION

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

53. (1) This Act does not apply in relation to an injury to an employee unless notice in writing of the injury is given to the relevant authority:

- (a) as soon as practicable after the employee becomes aware of the injury; or
- (b) if the employee dies without having become so aware or before it is practicable to serve such a notice—as soon as practicable after the employee's death.

(2) This Act does not apply in relation to the loss of, or damage to, property used by an employee, being a loss or damage in circumstances referred to in section 15, unless notice in writing of the accident that resulted in the loss or damage is given to the relevant authority:

- (a) as soon as practicable after the employee becomes aware that the accident had resulted in the loss or damage; or
- (b) if the employee dies without having become so aware or before it is practicable to serve such a notice—as soon as practicable after the employee's death.

(3) Where:

- (a) a notice purporting to be a notice referred to in this section has been given to the relevant authority;
- (b) the notice, as regards the time of giving the notice or otherwise, failed to comply with the requirements of this section; and
- (c) the relevant authority would not, by reason of the failure, be prejudiced if the notice were treated as a sufficient notice, or the failure resulted from the death, or absence from Australia, of a person, from ignorance, from a mistake or from any other reasonable cause;

the notice shall be taken to have been given under this section.

Claims for compensation

54. (1) Compensation is not payable to a person under this Act unless a claim for compensation is made by or on behalf of the person under this section.

(2) A claim shall be made by giving the relevant authority:

- (a) a written claim in accordance with the form approved by the Commission for the purposes of this paragraph; and
- (b) except where the claim is for compensation under section 16 or 17—a certificate by a legally qualified medical practitioner in accordance with the form approved by the Commission for the purposes of this paragraph.

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(3) Where a written claim, other than a claim for compensation under section 16 or 17, is given to a relevant authority under paragraph (2) (a) and the claim is not accompanied by a certificate of the kind referred to in paragraph (2) (b), the claim shall be taken not to have been made until such a certificate is given to that authority.

(4) Where a claim is given to the Commission, the Commission shall cause a copy of the claim to be given to:

- (a) where the employee concerned is or was a member of the Defence Force at the time when the relevant injury or accident occurred—the Secretary to the Department of Defence; or
- (b) in any other case—the Secretary of the Department, or the principal officer of the Commonwealth authority, in which the employee was employed at that time.

(5) Strict compliance with an approved form referred to in subsection (2) is not required and substantial compliance is sufficient.

Survival of claims

55. (1) Where a person who is entitled to make a claim for compensation under this Act dies without making a claim, a claim may be made by the person's personal representative.

(2) A claim is not affected by the death of the claimant after the claim was served.

(3) Section 111 applies in relation to an amount payable under a determination made in respect of a claim referred to in this section as if the deceased person had died after the determination was made.

(4) This section does not apply in relation to a claim for compensation under section 27.

Claims may not be made in certain cases

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

Power to require medical examination

57. (1) Where:

- (a) a notice has been given to a relevant authority under section 53 in relation to an employee; or
 - (b) an employee has made a claim for compensation under section 54;
- the relevant authority may require the employee to undergo an examination by a legally qualified medical practitioner nominated by the relevant authority.

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(2) Where an employee refuses or fails, without reasonable excuse, to undergo an examination, or in any way obstructs an examination, the employee's rights to compensation under this Act, and to institute or continue any proceedings under this Act in relation to compensation, are suspended until the examination takes place.

(3) The relevant authority shall pay the cost of conducting any examination required under this section and is liable to pay to the employee an amount equal to the amount of the expenditure reasonably incurred by the employee in making a necessary journey in connection with the examination or remaining, for the purpose of the examination, at a place to which the employee has made a journey for that purpose.

(4) The matters to which the relevant authority is to have regard in deciding questions arising under subsection (3) include:

- (a) the means of transport available to the employee for the journey;
- (b) the route or routes by which the employee could have travelled; and
- (c) the accommodation available to the employee.

(5) Where an employee's right to compensation is suspended under subsection (2), compensation is not payable in respect of the period of the suspension.

(6) An employee shall not be required to undergo an examination under this section at more frequent intervals than are specified by the Minister by notice in writing.

Power to request the provision of information

58. (1) Where a relevant authority has received a claim and is satisfied that the claimant:

- (a) has information or a document that is relevant to the claim; or
- (b) may obtain such information or a copy of such a document without unreasonable expense or inconvenience;

the relevant authority may, by notice in writing given to the claimant, request the claimant to give that information or a copy of that document to the relevant authority within 28 days after the date of the notice or within such further period (if any) as the relevant authority, on the request of the claimant, allows.

(2) A claimant who has received a notice under subsection (1) shall be taken to have complied with the notice if the claimant gives the relevant authority the information or document specified in the notice within 28 days after the date of notice or within such further period (if any) as the relevant authority has allowed.

(3) Where a claimant refuses or fails, without reasonable excuse, to comply with a notice under subsection (1), the relevant authority may

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refuse to deal with the claim until the claimant gives the relevant authority the information, or a copy of the document, specified in the notice.

Certain documents to be supplied on request

59. (1) A relevant authority shall:

- (a) on request by a claimant—give to the claimant any document held by the authority that relates to the claimant's claim; or
- (b) on request by the Commonwealth—give to the Commonwealth any document held by the authority that relates to a claim under this Act.

(2) This section also applies in relation to the determination of a request under section 25 and for that purpose:

- (a) a reference to a claim shall be read as a reference to the request under that section; and
- (b) a reference to the claimant shall be read as a reference to the person who made the request.

**PART VI—RECONSIDERATION AND REVIEW OF
DETERMINATIONS**

Interpretation

60. (1) In this Part:

“claimant” means a person in respect of whom a determination is made;

“decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

“determination” means a determination, decision or requirement made by the Commission or an administering authority under section 8, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 27, 29, 30, 31, 34, 36, 37 or 39 or under Division 3 of Part X;

“determining authority” means:

- (a) in relation to a determination made by the Commission—the Commission; and
- (b) in relation to a determination made by an administering authority—that authority;

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

(2) For the purposes of this Part, the parties to proceedings instituted under this Part are:

- (a) the applicant;
- (b) where the applicant is not the claimant—the claimant; and
- (c) the Commission or, where the decision was made by an administering authority, that authority.

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Determinations to be notified in writing

61. (1) As soon as practicable after a determining authority makes a determination, it shall cause to be served on the claimant a notice in writing setting out:

- (a) the terms of the determination;
- (b) the reasons for the determination; and
- (c) a statement to the effect that the claimant may, if dissatisfied with the determination, request a reconsideration of the determination under subsection 62 (2).

(2) This section does not apply in relation to a determination under subsection 16 (1) that compensation of an amount equal to the full amount of the cost of medical treatment obtained by an employee is payable if that amount of compensation is payable to a person other than the employee.

Reconsideration of determinations

62. (1) A determining authority may, on its own motion:

- (a) reconsider a determination made by it; or
- (b) cause such a determination to be reconsidered by a person to whom its power under this section is delegated, being a person other than the person who made, or was involved in the making of, the determination;

whether or not a proceeding has been instituted or completed under this Part in respect of a reviewable decision made in relation to that determination.

(2) The Commonwealth or a claimant may, by notice in writing given to a determining authority, request that authority to reconsider a determination made by it.

(3) A request for reconsideration of a determination shall:

- (a) set out the reasons for the request; and
- (b) be given to the determining authority within 30 days after the day on which the determination first came to the notice of the person making the request, or within such further period (if any) as the determining authority, either before or after the expiration of that period, allows.

(4) On receipt of a request, the determining authority shall reconsider the determination or cause the determination to be reconsidered by a person to whom its power under this section is delegated, being a person other than a person who made, or was involved in the making of, the determination.

(5) Where a person reconsiders a determination, the person may make a decision affirming or revoking the determination or varying the determination in such manner as the person thinks fit.

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Reviewable decision to be notified in writing

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

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

Applications to the Administrative Appeals Tribunal

64. (1) Application may be made to the Administrative Appeals Tribunal by the Commonwealth or a claimant for review of a reviewable decision.

(2) Despite section 27 of the *Administrative Appeals Tribunal Act 1975*, no person other than the Commonwealth or a claimant may make an application under subsection (1).

Modifications of the *Administrative Appeals Tribunal Act 1975*

65. (1) This section has effect for the purposes of the application of the *Administrative Appeals Tribunal Act 1975* (in this section called "the Act") in relation to a reviewable decision.

(2) Section 21 of the Act has effect as if a reference in subsection (1A) to a presidential member included a reference to a senior non-presidential member authorised by the President for the purposes of the exercise of the powers referred to in that subsection.

(3) Section 24 of the Act has effect as if the reference to any place in Australia or an external Territory were a reference to any place, whether within or outside Australia.

(4) Subsection 29 (2) of the Act has effect as if the reference to "the twenty-eighth day" (first occurring) were a reference to "the sixtieth day".

Evidence in proceedings before Administrative Appeals Tribunal

66. (1) Where:

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

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

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(2) Where:

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

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

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

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

Costs of proceedings before Administrative Appeals Tribunal

67. (1) Subject to this section, the costs incurred by a party to proceedings instituted under this Part in respect of that reviewable decision shall be borne by that party.

(2) Subject to this section, where a proceeding instituted under this Part in respect of a reviewable decision relating to a determination is rendered abortive because a decision has been made, following a reconsideration under subsection 62 (1), varying or revoking that determination, the determining authority is liable to reimburse the claimant for costs reasonably incurred by the claimant in connection with that proceeding.

(3) Where:

- (a) a determining authority has determined a claim (in this subsection called the "original determination");
- (b) the authority, before making that determination, gave the claimant a notice under section 58 requesting the claimant to give it the information specified in the notice (in this subsection called the "relevant information");
- (c) the claimant failed to comply with the notice;
- (d) at the time when the authority determined the claim, it did not have the relevant information nor was the relevant information reasonably available to it;
- (e) after the claim was determined, the claimant disclosed the relevant information to the authority or to the Administrative Appeals Tribunal;

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- (f) the authority reconsidered the original determination under subsection 62 (1) and made a determination more favourable to the claimant than the original determination;
- (g) the authority is satisfied that, if it had had the relevant information at the time when the original determination was made, it would have made a determination more favourable to the claimant than the original determination; and
- (h) the authority would, but for subsection (5), be liable under subsection (2), to reimburse the claimant for costs reasonably incurred by the claimant;

the authority may make a declaration, in writing, that subsection (2) does not apply to those costs.

(4) Where:

- (a) a determining authority has determined a claim (in this section called the "original determination");
- (b) the authority, before making that determination, gave the claimant a notice under section 58 requesting the claimant to give it a document, or a copy of the document, specified in the notice (in this subsection called the "relevant document");
- (c) the claimant failed to comply with the notice;
- (d) at the time when the authority determined the claim, it did not have the information contained in the relevant document nor was that information reasonably available to it;
- (e) after the claim was determined, the claimant gave the document, or a copy of the document, or the information contained in the relevant document, to the authority or to the Administrative Appeals Tribunal;
- (f) the authority reconsidered the original determination under subsection 62 (1), and made a determination more favourable to the claimant than the original determination;
- (g) the authority is satisfied that, if it had had the information contained in the relevant document at the time when the original determination was made, it would have made a determination more favourable to the claimant than the original determination; and
- (h) the authority would, but for subsection (5), be liable, under subsection (2), to reimburse the claimant for costs reasonably incurred by the claimant;

the authority may make a declaration, in writing, that subsection (2) does not apply in relation to those costs.

(5) Where a determining authority makes a declaration under subsection (3) or (4) that subsection (2) does not apply in relation to costs incurred by a claimant, subsection (2) does not apply in relation to those costs.

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(6) A determining authority shall give a copy of a declaration made by it under subsection (3) or (4) to the claimant.

(7) Application may be made to the Administrative Appeals Tribunal for review of a decision by a determining authority to make a declaration under subsection (3) or (4).

(8) Where, in any proceedings, the Administrative Appeals Tribunal makes a decision:

- (a) varying a reviewable decision in a manner favourable to the claimant;
or
- (b) setting aside a reviewable decision and making a decision in substitution for the reviewable decision that is more favourable to the claimant than the reviewable decision;

the Tribunal may, subject to this section, order that the costs of those proceedings incurred by the claimant, or a part of those costs, shall be paid by the determining authority.

(9) Where the Administrative Appeals Tribunal gives a decision setting aside a reviewable decision and remitting the case for re-determination by the determining authority, the Tribunal shall, subject to this section, order that the costs of the proceedings before it incurred by the claimant shall be paid by the authority.

(10) Nothing in subsection (8) or (9) authorises the Administrative Appeals Tribunal to order a determining authority to pay any costs incurred by a claimant in relation to an application for an extension of time for applying to the Tribunal for a review of a reviewable decision.

(11) Where, in any proceedings, the Administrative Appeals Tribunal varies or sets aside a reviewable decision, the Tribunal shall not make an order under subsection (8) or (9) in favour of a claimant in relation to the costs of those proceedings if:

- (a) the authority, before making the reviewable decision, gave the claimant a notice under section 58 requesting the claimant to give the Commission or authority information specified in the notice (in this subsection called the "relevant information"); and
- (b) the Tribunal is satisfied that:
 - (i) the claimant failed to comply with that notice;
 - (ii) at the time when the authority made the reviewable decision, it did not have the relevant information, nor was the relevant information reasonably available to it; and
 - (iii) if the authority had had the relevant information at the time when it made the reviewable decision it would have made a decision more favourable to the claimant than the reviewable decision.

(12) Where, in any proceedings, the Administrative Appeals Tribunal varies or sets aside a reviewable decision, the Tribunal shall not make an

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order under subsection (8) or (9) in favour of a claimant in relation to the costs of those proceedings if:

- (a) the determining authority, before making the reviewable decision, gave the claimant a notice under section 58 requesting the claimant to give the authority a copy of the document specified in the notice (in this subsection called the "relevant document"); and
- (b) the Tribunal is satisfied that:
 - (i) the claimant failed to comply with that notice;
 - (ii) at the time when the authority made the reviewable decision, it did not have the information contained in the relevant document, nor was that information reasonably available to it; and
 - (iii) if the authority had had the information contained in the relevant document at the time when it made the reviewable decision it would have made a decision more favourable to the claimant than the reviewable decision.

(13) Where the Administrative Appeals Tribunal orders a determining authority to pay costs incurred by a claimant, the Tribunal may, in the absence of agreement between the parties as to the amount of the costs, tax or settle the amount of the costs or order that the costs be taxed by the Registrar or a Deputy Registrar of the Tribunal.

**PART VII—COMMISSION FOR THE SAFETY, REHABILITATION
AND COMPENSATION OF COMMONWEALTH EMPLOYEES**

Division 1—Establishment, functions and powers of Commission

Establishment

68. There is established by this section a Commission called the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees.

Functions

69. Subject to this Act, the Commission has the following functions, in addition to its other functions under this Act:

- (a) to make determinations accurately and quickly in relation to claims and requests made to the Commission under this Act;
- (b) to minimise the duration and severity of injuries to its employees and employees of exempt authorities by arranging quickly for the rehabilitation of those employees under this Act;
- (c) to co-operate with other bodies or persons with the aim of reducing the incidence of injury to employees;
- (d) to conduct and promote research into the rehabilitation of employees and the incidence and prevention of injury to employees;

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- (e) to publish material relating to any of the functions referred to in paragraphs (a), (c) and (d) and relating to the rehabilitation of employees under this Act;
- (f) to maintain contact with each administering authority and rehabilitation authority to the extent necessary to ensure that, as far as practicable, there is no inconsistency in the administrative practices and procedures used by the Commission and the authority in the performance of their respective functions;
- (g) such other functions as are conferred on the Commission by any other Act.

Powers

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

Power to obtain information from Departments and authorities

71. (1) Without limiting the generality of section 70, the Commission may, by notice in writing, require the Secretary of a Department or the principal officer of a Commonwealth authority (other than an administering authority) to give the Commission, within such period as is specified in the notice, such documents or information (or both) as are specified in the notice, being documents or information in the possession, custody or control of the Department or authority that are relevant to a claim made by, or in relation to, an employee of the Department or authority or that relate to the performance of functions or the exercise of powers by the Secretary or principal officer under Part III.

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

Manner in which claims are to be determined

72. In performing the function referred to in paragraph 69 (a), the Commission:

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

Directions by Minister

73. (1) The Minister may, by notice in writing given to the Chief Executive Officer, give a direction to the Commission with respect to the performance of its functions or the exercise of its powers, otherwise than in relation to a particular case.

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

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Division 2—Constitution and meetings of Commission

Commission is body corporate etc.

74. (1) The Commission:

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

(2) The common seal of the Commission shall be kept in such custody as the Commission directs and shall not be used except as authorised by the Commission.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Commission appearing on a document and shall presume that it was duly affixed.

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

Constitution

75. The Commission comprises the following members:

- (a) a Chief Executive Officer;
- (b) a Commissioner representing employees; and
- (c) a Commissioner representing the Commonwealth.

Appointment of members

76. (1) The members shall be appointed by the Governor-General.

(2) The member referred to in paragraph 75 (b) shall be appointed on the nomination of an organisation that, in the opinion of the Minister, represents the interests of employees.

(3) A person who has reached 65 shall not be appointed as a member.

(4) The Chief Executive Officer shall hold office on a full-time basis and shall not engage in paid employment outside the duties of that office without the approval of the Minister.

(5) A Commissioner shall hold office on a part-time basis.

(6) The Minister shall not give an approval under subsection (4) unless satisfied that the paid employment will not interfere with the performance by the Chief Executive Officer of his or her duties.

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Term of office

77. (1) The Chief Executive Officer shall hold office, subject to this Act, for such term, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment on 2 occasions after his or her initial appointment.

(2) A Commissioner shall hold office, subject to this Act, for such term, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment on 2 occasions after his or her initial appointment.

(3) A member shall not be appointed for a term that expires after the day on which the member reaches 65.

Deputies of Commissioners

78. (1) A Commissioner may, with the approval of the Minister, appoint a person to be the deputy of the Commissioner.

(2) A Commissioner may revoke the appointment of his or her deputy but the revocation is not effective until the Commissioner has given written notice of the revocation to the Minister.

(3) A deputy is entitled, in the absence of the Commissioner who appointed him or her from a meeting of the Commission, to attend that meeting and, when so attending, shall be deemed to be a Commissioner.

(4) A deputy may resign the office of deputy by delivering to the Commissioner who appointed him or her a signed notice of resignation.

(5) Anything done by or in relation to a deputy purporting to act under this section is not invalid merely because:

- (a) there is a defect or irregularity in connection with the appointment;
- (b) the appointment had ceased to have effect; or
- (c) the occasion for the deputy to act had not arisen or had ceased.

Persons acting as Chief Executive Officer

79. (1) Subject to subsection (2), the Deputy Chief Executive Officer shall act as the Chief Executive Officer:

- (a) during a vacancy in the office of the Chief Executive Officer, whether or not an appointment has previously been made to the office; or
- (b) during any period when the Chief Executive Officer is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his or her office;

but shall not continue to act during a vacancy for more than 12 months.

(2) The Deputy Chief Executive Officer shall not act as the Chief Executive Officer while a person appointed under subsection (4) is acting as the Chief Executive Officer.

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(3) Anything done by or in relation to the Deputy Chief Executive Officer when purporting to act as the Chief Executive Officer under this section is not invalid merely because the occasion to act had not arisen or had ceased.

(4) The Governor-General may appoint a person to act as the Chief Executive Officer:

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

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(5) Anything done by or in relation to a person purporting to act under an appointment under subsection (4) is not invalid merely because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

Remuneration and allowances

80. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no such determination is in operation, the member shall be paid such remuneration as is prescribed.

(2) A deputy of a Commissioner shall be paid, in respect of the deputy's attendance at a meeting of the Commission, such fee as is determined by the Remuneration Tribunal, but, if no such determination is in operation, the deputy shall be paid such fee as is prescribed.

(3) A member and the deputy of a Commissioner shall be paid such allowances as are prescribed.

(4) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Leave of absence

81. The Minister may grant leave of absence to the Chief Executive Officer on such terms and conditions as the Minister considers appropriate.

Disclosure of interests

82. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Commission.

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(2) A disclosure shall be recorded in the minutes of the meeting of the Commission and the member shall not, unless the Minister or the Commission otherwise determines:

- (a) be present during any deliberation of the Commission with respect to that matter; or
- (b) take part in any decision of the Commission with respect to that matter.

(3) For the purpose of the making of a determination by the Commission under subsection (2) in relation to a member who has made a disclosure, a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:

- (a) be present during any deliberation of the Commission for the purpose of making the determination; or
- (b) take part in the making by the Commission of the determination.

(4) In this section:

“member” includes a person who is acting in the office of a member or is deemed to be a member.

Resignation

83. A member may resign by delivering to the Governor-General a signed notice of resignation.

Termination of appointment

84. (1) The Governor-General may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

(2) If:

- (a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) a member, without reasonable excuse, contravenes section 82;
- (c) the Chief Executive Officer is absent from 3 consecutive meetings of the Commission, or is absent from duty for 14 consecutive days, or for 28 days in any period of 12 months, except on leave of absence granted under section 81;
- (d) a member (other than the Chief Executive Officer) is absent, except with the leave of the Chief Executive Officer, from 3 consecutive meetings of the Commission;
- (e) the organisation on whose nomination the member referred to in paragraph 75 (b) was appointed requests, by notice in writing to the Minister, that the member's appointment be terminated; or
- (f) the Chief Executive Officer engages in paid employment outside the duties of his or her office without the approval of the Minister;

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the Governor-General shall, by notice published in the *Gazette*, terminate the appointment of the member.

Meetings

85. (1) The Commission shall meet as often as is necessary for the efficient performance of its functions but shall meet at least once in the period of 3 months commencing on the day on which the Commission is established and at least once in each successive period of 3 months.

(2) A meeting of the Commission shall be convened by a member.

(3) At a meeting of the Commission, 2 members (one of whom shall be the Chief Executive Officer) constitute a quorum.

(4) The Chief Executive Officer shall preside at all meetings of the Commission.

(5) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the members present at the meeting.

(6) The Chief Executive Officer has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(7) If, at any meeting of the Commission at which one Commissioner only is present, not being a meeting from which the Commissioner is absent by reason of section 82, the members differ in opinion on any matter, the determination of that matter shall be postponed to a full meeting of the Commission.

(8) Subject to this section, the Commission may regulate the conduct of proceedings at its meetings as it thinks fit.

(9) In this section, a reference to the Chief Executive Officer, if a person is acting as Chief Executive Officer, is a reference to the person so acting.

Division 3—Deputy Chief Executive Officer, staff and consultants

Deputy Chief Executive Officer

86. (1) There shall be a Deputy Chief Executive Officer.

(2) The Deputy Chief Executive Officer shall be an officer, within the meaning of the *Public Service Act 1922*, being the occupant for the time being of such office in the Commission as the Minister designates, in writing signed by the Minister, for the purpose of this section.

Duties of Deputy Chief Executive Officer

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

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Staff

88. (1) The staff of the Commission comprises:

- (a) persons appointed or employed under the *Public Service Act 1922* for the purposes of the Commission; and
- (b) such other persons (if any) as the Commission thinks necessary to employ to assist the Commission in the performance of its functions and the exercise of its powers.

(2) The Chief Executive Officer has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922* so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in paragraph (1) (a).

(3) Persons employed under paragraph (1) (b) shall be employed under an agreement in writing.

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

Consultants

89. (1) The Commission may engage, under agreements in writing, persons having suitable qualifications and experience to perform services as consultants to the Commission.

(2) The terms and conditions of engagement of persons referred to in subsection (1) are such as are from time to time determined by the Commission.

Division 4—Finance

Application of Division 3 of Part XI of Audit Act

90. (1) The Commission is hereby declared to be a public authority to which Division 3 of Part XI of the *Audit Act 1901* applies.

(2) Subsection 63M (1) of the *Audit Act 1901* applies in relation to the Commission as if:

- (a) the reference in that subsection to 30 June in each year were a reference to 30 June 1989 and each 30 June thereafter; and
- (b) it required that the report to be prepared and submitted as soon as practicable after 30 June 1989 be a report of the Commission's operations during the period commencing on the commencement of this Part and ending on the expiration of 30 June 1989.

(3) The Commission shall, in each report prepared under section 63M of the *Audit Act 1901* (as that section applies to the Commission by virtue of this section) include particulars of:

- (a) each direction given by the Minister under section 73 or 105; and
- (b) the operations of each administering authority under this Act; during the period to which the report relates.

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Money of Commission

91. (1) There is payable to the Commission such money as is appropriated by the Parliament for the purposes of the Commission.

(2) The Minister for Finance may give directions as to the amounts in which, and the times at which, money referred to in subsection (1) is to be paid to the Commission.

(3) The money of the Commission shall be applied only:

- (a)** in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Commission in the performance of its functions and the exercise of its powers;
- (b)** in payment of remuneration and allowances payable under this Act; and
- (c)** in making any other payments required or permitted to be made by the Commission.

(4) Money of the Commission not immediately required for the purposes of the Commission may be invested:

- (a)** on deposit with a bank that is an approved bank within the meaning of section 63J of the *Audit Act 1901*;
- (b)** in securities of the Commonwealth; or
- (c)** in any other manner approved by the Treasurer.

Estimates of receipts and expenditure

92. (1) The Commission shall prepare estimates, in such form as the Minister directs, of the receipts and expenditure of the Commission for each financial year and, if the Minister so directs, for any other period specified by the Minister, and submit those estimates to the Minister not later than such date as the Minister directs.

(2) The money of the Commission shall not be expended otherwise than in accordance with estimates of expenditure approved by the Minister.

(3) A reference in this section to the receipts and expenditure of the Commission shall be taken not to include a reference to amounts of compensation paid or payable to, or in accordance with the directions of, the Commission under this Act.

Exemption from taxation

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

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Contracts

94. The Commission shall not, except with the approval of the Minister, enter into a contract involving the payment or receipt by the Commission of an amount exceeding \$100,000.

Borrowing

95. (1) The Commission may, with the written approval of the Treasurer, borrow money otherwise than from the Commonwealth on terms and conditions that are specified in, or consistent with, the approval.

(2) An approval may be in respect of particular borrowings or a specified class or classes of borrowings.

(3) The Treasurer may, on behalf of the Commonwealth, guarantee the repayment by the Commission of the amounts borrowed under this section and the payment of interest on such amounts.

(4) The Commission may give security over the whole or any part of its assets for the repayment of money borrowed by the Commission and the payment of any money that it is otherwise liable to pay in respect of those borrowings, including the payment of any interest on such money.

(5) The Commission shall not borrow money, except under this section, or otherwise raise money.

Estimates of contributions

96. (1) The Commission shall prepare estimates, in such form as the Minister directs, of the amount of contribution of each Department or Commonwealth authority (other than an administering authority) for each financial year and submit those estimates to the Minister for approval not later than such date as the Minister directs.

(2) The amount of contribution of a Department or Commonwealth authority for a financial year is the prescribed amount in relation to that Department or authority for that year plus any penalty amount, or less any bonus amount, determined by the Commission in relation to that Department or authority for that year.

(3) The Secretary of a Department, or the principal officer of a Commonwealth authority, shall, on written request by the Commission, give the Commission such information as is specified in the request, being information needed by the Commission to enable it to prepare estimates under this section in relation to the Department or authority.

(4) The Commission shall give the Secretary of a Department, or the principal officer of a Commonwealth authority, a copy of the estimates submitted to the Minister of the contributions of that Department or authority.

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(5) In this section:

“bonus amount”, in relation to a Department or Commonwealth authority for a financial year, means such amount (if any) as is determined by the Commission to be an appropriate amount to be deducted from the prescribed amount in relation to the Department or authority for that year, having regard to the number of claims made by employees of the Department or authority, the amount of compensation paid to such employees under this Act and the nature and extent of any rehabilitation programs provided to such employees under Part III;

“penalty amount”, in relation to a Department or Commonwealth authority for a financial year, means such amount (if any) as is determined by the Commission to be an appropriate amount to be added to the prescribed amount in relation to the Department or authority for that year, having regard to the number of claims made by employees of the Department or authority, the amount of compensation paid to such employees under this Act and the nature and extent of any rehabilitation programs provided to such employees under Part III;

“prescribed amount”, in relation to a Department or Commonwealth authority for a financial year, means an amount calculated under the formula:

$$EC + EA$$

where:

EC is the estimated amount of the Commission's liability under the Act in respect of claims made by employees of the Department or authority during that year; and

EA is the estimated administrative costs of the Commission during that year that are reasonably attributable to that Department or authority, having regard to the estimated number of claims to be made during that year by or in relation to employees of that Department or authority.

Review of estimates of contributions

97. (1) Where the Secretary of a Department or the principal officer of a Commonwealth authority objects to an estimate submitted to the Minister under section 96, the Secretary or principal officer may, at any time before the Minister approves the estimate, by notice in writing, request the Minister to review the estimate.

(2) A request shall set out the grounds of the objection to the estimate.

(3) On receipt of a request, the Minister shall review the estimate to which the request relates and may confirm the estimate or vary it in such manner as the Minister thinks fit.

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Payment of contribution

98. Where the Minister approves an estimate (or an estimate as varied under section 97) of the amount of contribution of a Department or Commonwealth authority for a financial year:

- (a) the Commission shall notify the Secretary of the Department or the principal officer of the authority, accordingly; and
- (b) the Secretary or principal officer shall comply with the directions of the Minister with respect to the payment into, or the transfer within, the Consolidated Revenue Fund, as the case requires, of an amount equal to the estimated amount.

Division 5—Miscellaneous

Delegation by Commission

99. (1) The Commission may, by resolution, delegate to an officer of, or a person employed by, the Commonwealth or a Commonwealth authority all or any of the Commission's powers and functions.

(2) A delegation under this section:

- (a) continues in force in spite of a change in the membership of the Commission; and
- (b) may be varied or revoked by resolution of the Commission (whether or not constituted by the persons constituting the Commission at the time when the power or function was delegated).

(3) A certificate signed by the Chief Executive Officer stating any matter with respect to a delegation of a power or function under this section is *prima facie* evidence of that matter.

(4) A document purporting to be a certificate under subsection (3) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

Annual Report under 1971 Act

100. (1) In spite of the repeal of the 1971 Act by this Act, the Commission shall, as soon as possible after the commencing day, prepare and furnish to the Minister a report in relation to the relevant period in accordance with section 122 of the 1971 Act and that section continues in force for the purpose of that report as if:

- (a) the reference to the Commissioner in subsection 122 (1) were a reference to the Commission; and
- (b) the reference to a financial year in that subsection were a reference to the relevant period.

(2) A report by the Commission under this section shall include any matters that would have been required to be included in a report under section 122 of the 1971 Act by virtue of paragraph 122 (1) (d) of that Act if this Act had not been enacted.

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(3) In this section:

“commencing day” means the day on which this section commences;

“relevant period” means the period:

- (a) commencing on the expiration of the last financial year before the commencing day in relation to which a report was furnished to the Minister under section 122 of the 1971 Act; and
- (b) expiring on the commencing day.

PART VIII—ADMINISTERING AUTHORITIES

Administering authorities

101. (1) The Minister may, by notice in writing, declare a Commonwealth authority specified in the notice to be an administering authority.

(2) Where the Minister declares a Commonwealth authority to be an administering authority:

- (a) any liability of the Commission to pay compensation or make any other payment under this Act in respect of an injury, loss or damage suffered by an employee of the authority, or in respect of the death of such an employee, being a liability that had not been discharged before the day on which the declaration takes effect, shall, by force of this subsection, vest in the authority on that day;
- (b) any notice or claim duly given to the Commission under Part V before the day on which the declaration takes effect, being a notice or claim in respect of any injury, loss or damage suffered by an employee of that authority, or in respect of the death of such an employee, shall, on and after that day, be taken to have been duly given to the authority;
- (c) any determination made or any action taken by the Commission in respect of the liability of the Commission to pay compensation or make any other payment under this Act in respect of an injury, loss or damage suffered by an employee of the authority, or in respect of the death of such an employee, shall, on and after the day on which the declaration takes effect, be taken to have been made or taken by the authority in respect of its liability to pay such compensation or make any such payment;
- (d) any proceedings to which the Commission was a party, being proceedings relating to any matter arising under this Act (including proceedings under Part VI) in relation to an employee of the authority that had been instituted but not completed before the day on which the declaration takes effect, may be continued on and after that day and, where the proceedings are so continued, the

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authority shall be a party to those proceedings and the Commission shall cease to be such a party; and

- (e) there shall be paid to the authority out of the Consolidated Revenue Fund, which is appropriated accordingly, such amount as the Minister for Finance determines, having regard to the amounts of the contributions of the authority under section 98 and the amounts of compensation paid by the Commission under this Act in respect of employees of the authority.

(3) Where the Minister revokes a declaration of an administering authority:

- (a) any liability of the authority to pay compensation or make any other payment under this Act in respect of an injury, loss or damage suffered by an employee of that authority, or in respect of the death of such an employee, being a liability that had not been discharged before the day on which the revocation takes effect, shall, by force of this subsection, vest in the Commission on that day;
- (b) any notice or claim duly given to the authority under Part V before the day on which the revocation takes effect, being a notice or claim in respect of any injury, loss or damage suffered by an employee of the authority, or in respect to the death of such an employee, shall, on and after that day, be taken to have been duly given to the Commission;
- (c) any determination made or any action taken by the authority in respect of the liability of the authority to pay compensation or make any other payment under this Act in respect of an injury, loss or damage suffered by an employee of the authority, or in respect of the death of such an employee, shall, on and after the day on which the revocation takes effect, be taken to have been made or taken by the Commission in respect of its liability to pay such compensation or make any other payment;
- (d) any proceedings to which the authority was a party, being proceedings relating to any matter arising under this Act (including proceedings under Part VI) that had been instituted but not completed before the day on which the revocation takes effect, may be continued on and after that day and, where the proceedings are so continued, the Commission shall be a party to those proceedings and the authority shall cease to be such a party; and
- (e) the authority shall comply with the directions of the Minister for Finance with respect to the payment into, or the transfer within, the Consolidated Revenue Fund of such amount as that Minister determines, having regard to the amount of compensation paid by the authority under this Act in respect of its employees.

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Functions

102. Subject to this Act, an administering authority has the following functions, in addition to its other functions under this Act:

- (a) to make determinations accurately and quickly in relation to claims and requests made to it under this Act;
- (b) to minimise the duration and severity of injuries to its employees by arranging quickly for the rehabilitation of those employees under this Act;
- (c) to maintain contact with the Commission to the extent necessary to ensure that, as far as practicable, there is no inconsistency in the administrative practices and procedures used by the Commission and the authority in the performance of their respective functions.

Powers

103. An administering authority has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions under this Act.

Manner in which claims are to be determined

104. In performing the function referred to in paragraph 102 (a), the administering authority:

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

Directions by Minister

105. (1) The Minister may, by notice in writing given to the principal officer of an administering authority, give a direction to the authority with respect to the performance of its functions or the exercise of its powers under this Act, otherwise than in relation to a particular case.

(2) An authority shall comply with a direction given under subsection (1).

Delegation by administering authority

106. An administering authority may, by instrument in writing, delegate to an officer of, or a person employed by, that authority all or any of the powers and functions of the authority under this Act.

Information relating to operations of administering authority

107. (1) For the purposes of enabling the Commission to comply with paragraph 90 (3) (b), the principal officer of an administering authority shall, on the written request of the Chief Executive Officer, give the Chief Executive Officer such information relating to the operations of the authority under this Act as is specified in the request.

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(2) Where an administering authority is required under any other Act to prepare an annual report of its operations and activities, the authority shall include in each such report particulars of its operations under this Act during the period to which the report relates.

PART IX—MISCELLANEOUS

Jurisdiction of courts with respect to extraterritorial offences

108. (1) Subject to this section, the several courts of the States are invested with federal jurisdiction, and jurisdiction is conferred on the several courts of the external Territories, with respect to external offences.

(2) The jurisdiction invested in, or conferred on, courts by subsection (1) is invested or conferred within the limits (other than limits based on the places at which offences are committed) of their several jurisdictions, whether those limits are as to subject-matter or otherwise.

(3) Jurisdiction with respect to an external offence is not conferred on a court of an external Territory unless the offence was committed in that Territory.

(4) Subject to this section, the *Judiciary Act 1903* applies in relation to offences in relation to which this section applies.

(5) In this section:

“external offence” means an offence against this Act committed outside Australia.

Determinations to be in writing

109. (1) A determination under this Act shall be in writing.

(2) A determination shall be taken to be in writing if it is entered into, or recorded with the use of, a computer.

Money paid to relevant authority for benefit of person

110. (1) Where any money is payable under this Act to an employee who is under a legal disability, the money shall be paid to, or in accordance with the directions of, the relevant authority for the benefit of the employee and, when so paid, shall, for the purposes of this Act other than this section, be deemed to have been paid to the employee.

(2) Where money is held by a relevant authority under this Act for the benefit of a person, the relevant authority shall, subject to subsections (3) and (4), invest the money in any manner for the time being allowed by an Act, a State Act or an Ordinance of a Territory for the investment of trust money and income resulting from any such investment shall be deemed to form part of the first-mentioned money.

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(3) A relevant authority may pay any money referred to in subsection (2) to, or in accordance with the directions of, the person or apply the money in such manner as it thinks fit, for the benefit of the person.

(4) Where money is held by a relevant authority for the benefit of an employee who is under a legal disability, the relevant authority shall, when the employee ceases to be under a legal disability, pay the money to, or in accordance with the directions of, the employee or, if the money has been invested, deal with the investments in accordance with the directions of the employee.

Provisions applicable on death of beneficiary

111. (1) Subject to this section, where a determination is made that an amount of compensation is payable under this Act to a person and the person dies before the amount is paid, the amount forms part of the estate of the person.

(2) Subject to subsections (3), (4) and (5), where a relevant authority holds any money or investments for the benefit of a person under this Act and that person dies, that money or those investments form part of the estate of that person.

(3) Where a person referred to in subsection (1) dies intestate and there is no other person apparently entitled to claim the estate (including that amount of compensation) of that person, subsection (1) does not apply and, subject to subsection (5), if the amount of compensation is held by a relevant authority, it shall pay the amount to the Commonwealth.

(4) Where a person referred to in subsection (2) dies intestate and there is no other person apparently entitled to claim the estate (including that money or those investments) of that person, subsection (2) does not apply and, subject to subsection (5), the relevant authority shall pay the money, or realise the investments and pay the proceeds of the realisation, as the case may be, to the Commonwealth.

(5) Nothing in this section prevents a relevant authority from rendering any provision of this section inoperative in a particular case by making a decision under section 62.

Assignment, set-off or attachment of compensation

112. (1) An assignment of any compensation payable under this Act is void as against a relevant authority.

(2) Except as provided by this Act, an amount payable by an employee or a dependant of a deceased employee to the Commonwealth or a relevant authority shall not be set off against the amount of any compensation payable under this Act to the employee or for the benefit of the dependant.

(3) Except as provided by the *Maintenance Orders (Commonwealth Officers) Act 1966* or the *Child Support Act 1988*, or by, or by regulations

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under, the *Family Law Act 1975*, any compensation payable under this Act is not subject to attachment.

Recovery of amounts due to relevant authority

113. Where:

- (a) a person (in this section called "the debtor") is liable to pay an amount to a relevant authority under this Act; and
- (b) the relevant authority holds on behalf of the debtor:
 - (i) money, being compensation payable under this Act for the benefit of the debtor; or
 - (ii) investments acquired out of money of a kind referred to in subparagraph (i);

the relevant authority shall recover from the money so held, or shall realise the investments so held and recover from the proceeds of the realisation, an amount not exceeding the amount referred to in paragraph (a) and the recovery of that amount is, to the extent of the amount, a discharge of the liability of the debtor to the relevant authority and of the relevant authority to the debtor.

Recovery of overpayments

114. (1) Where:

- (a) an amount of compensation under this Act has been paid to a person in consequence of a false or misleading statement or representation or in consequence of a failure or omission to comply with a provision of this Act;
- (b) an amount of compensation that has been paid to a person under this Act should not have been paid; or
- (c) a person is liable to pay an amount to a relevant authority under this Act;

the amount concerned is recoverable by the relevant authority from the person in a court of competent jurisdiction as a debt due to the relevant authority.

(2) Where an amount is recoverable from a person under subsection (1) and an amount is payable under this Act to or for the benefit of that person, the recoverable amount may be deducted from the amount so payable.

Deduction of overpayments of repatriation pensions

115. (1) Where:

- (a) an amount of pension has been paid to a person under the *Veterans' Entitlements Act 1986* in respect of the incapacity or death of a member of the Forces within the meaning of Part IV of that Act; and

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- (b) that amount is not payable to that person by virtue of section 74 of that Act;

that amount is recoverable from that person by deducting it from any amounts of compensation payable to that person under this Act in respect of the injury to, or death of, the member.

(2) For the purposes of subsection (1), a person authorised by the Repatriation Commission may, by writing signed by the person, certify that:

- (a) an amount specified in the certificate has been paid by way of pension under the *Veterans' Entitlements Act 1986* to a person specified in the certificate;
- (b) that amount was paid in respect of the incapacity or death of a person specified in the certificate;
- (c) the person referred to in paragraph (b) is or was a member of the Forces within the meaning of Part IV of that Act; and
- (d) by virtue of section 74 of that Act, the amount referred to in paragraph (a) is not payable to the person referred to in paragraph (a).

(3) For the purposes of subsection (1), a certificate under subsection (2) is *prima facie* evidence of the matters certified.

(4) Nothing in this section prevents the recovery of an amount referred to in subsection (1) otherwise than in accordance with that subsection, but such amount shall not be recovered twice.

Employees on compensation leave

116. In spite of the provisions of any other Act or an award, an employee is not entitled to be granted any kind of leave of absence with pay (other than maternity leave with pay) during, or in respect of, any period when the employee is or was on compensation leave but:

- (a) sick leave and recreation leave entitlements continue to accrue in relation to the employee during each of the first 45 weeks during which he or she is on compensation leave; and
- (b) long service leave entitlements continue to accrue in relation to the employee during the whole of the period of the compensation leave;

as if the employee were not absent from work.

Compensation payable to locally engaged overseas employees

117. (1) This section applies to employees who were engaged outside Australia for employment outside Australia and are performing the duties of their employment outside Australia.

(2) Where a compensation scheme in force in a foreign country applies (whether because of contributions made by the Commonwealth under the scheme or otherwise) in respect of the employment by the Commonwealth in that country of employees to whom this section applies, or such a

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compensation scheme would, but for this Act, be so applicable, this Act does not apply in respect of the employment by the Commonwealth in that country of those employees.

- (3) Where a compensation scheme in force in a foreign country:
- (a) does not, and, but for this Act, would not apply, in respect of the employment by the Commonwealth in that country of a class of employees to whom this section applies; and
 - (b) does apply (whether because of contributions made by the Commonwealth under the scheme or otherwise) in respect of the employment by the Commonwealth in that country of other such employees or would, but for this Act, be so applicable;

that compensation scheme shall be taken to apply in respect of the employment by the Commonwealth in that country of the employees referred to in paragraph (a) and the relevant authority is liable to provide benefits for those employees in accordance with that compensation scheme in respect of their employment by the Commonwealth in that country.

(4) Where, in a foreign country, there is no compensation scheme in force that applies, or, but for this Act, would apply, in respect of the employment by the Commonwealth in that country of employees to whom this section applies, but there is a compensation scheme in force in that country that applies in respect of persons employed by the Government of that country, that compensation scheme shall be taken to apply in respect of the employment by the Commonwealth of those employees in that country and the relevant authority is liable to provide benefits for those employees in accordance with that compensation scheme in respect of that employment.

(5) A relevant authority is not liable, otherwise than under this section, to pay compensation in respect of the employment of an employee to whom this section applies in circumstances where a compensation scheme referred to in this section applies, or is to be taken to apply, in respect of that employment.

- (6) In this section:
- (a) a reference to a foreign country includes a reference to an external Territory;
 - (b) a reference to the Government of a foreign country, in relation to an external Territory, is a reference to the Administration of that Territory;
 - (c) a reference to benefits is a reference to compensation benefits for persons in the event of their death or incapacity due to an injury or disease occurring in circumstances connected with their employment; and

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- (d) a reference to a compensation scheme is a reference to a scheme (whether constituted by a law or not) for the provision of compensation benefits.

Double benefits

118. (1) If:

- (a) an employee recovers State workers' compensation in respect of an injury or the loss of, or damage to, property used by the employee; or
(b) State workers' compensation is recovered by, or for the benefit of, a dependant of a deceased employee;

compensation is not payable under this Act to that employee in respect of that injury, loss or damage, or to, or for the benefit of, that dependant in respect of the injury that resulted in the death.

(2) If, after any compensation has been paid by a relevant authority under this Act:

- (a) to an employee in respect of an injury or the loss of, or damage to, property used by the employee; or
(b) to, or for the benefit of, a dependant of a deceased employee;

any State workers' compensation is recovered by the employee in respect of that injury, loss or damage or to, or for the benefit of, the dependant in respect of the injury that resulted in the death, as the case may be, the relevant authority may recover the amount of compensation paid by it from the person to whom it was paid in a court of competent jurisdiction as a debt due to the authority.

(3) A relevant authority that has received a claim may require the claimant to give it a statutory declaration stating whether any State workers' compensation has been paid to or in respect of the claimant in respect of the injury or loss of, or damage to, property, as the case may be, to which the claim relates.

(4) Where a claimant for compensation refuses or fails, without reasonable excuse, to give a statutory declaration under subsection (3), the claimant's rights to compensation under this Act in respect of the injury or loss of, or damage to, property to which the claim relates, and to institute or continue any proceedings under this Act in relation to that compensation, are suspended until the statutory declaration is given.

(5) Where a claimant's right to compensation is suspended under subsection (4), compensation is not payable in respect of the period of the suspension.

(6) In this section:

“State workers' compensation” means compensation recoverable under a law of a State or of a Territory, or of a foreign country, relating to workers' compensation.

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Compensation where State compensation payable

119. (1) If:

- (a) an employee recovers State compensation in respect of an injury to the employee or in respect of the loss of, or damage to, property used by the employee; or
- (b) State compensation is recovered by, or for the benefit of, a dependant of a deceased employee;

the succeeding provisions of this section have effect.

(2) Subject to this section, the compensation that is payable under this Act to the employee in respect of the injury, loss or damage, or for the benefit of the dependant in respect of the injury that resulted in the death, as the case may be, is so much (if any) of the compensation under this Act that, but for this section, would be so payable as exceeds the amount of State compensation recovered by the employee or by, or for the benefit of, the dependant, as the case may be.

(3) Subject to this section, if, before the recovery of State compensation by or for the benefit of the employee or dependant, compensation under this Act was paid to the employee by a relevant authority in respect of the injury, loss or damage, or for the benefit of the dependant in respect of the injury that resulted in the death, as the case may be, the employee or dependant is liable to pay to the relevant authority:

- (a) the amount of the compensation paid by it under this Act; or
- (b) the amount of the State compensation recovered by the employee or for the benefit of the dependant;

whichever is less.

(4) Where:

- (a) a person (in this subsection called "the debtor") is liable to pay an amount to a relevant authority under this section; and
- (b) any other person holds on behalf of the debtor:
 - (i) money, being compensation payable under this Act for the benefit of, or State compensation payable to, the debtor; or
 - (ii) investments acquired out of money of a kind referred to in subparagraph (i);

the other person shall:

- (c) deduct from the money so held, or realise those investments so held and deduct from the proceeds of the realisation, an amount not exceeding the amount referred to in paragraph (a); and
 - (d) pay the amount so deducted to the relevant authority;
- and the payment of that amount is, to the extent of the amount paid, a discharge of the liability of the debtor to the relevant authority and of the other person to the debtor.

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(5) A reference in subsection (3) to compensation under this Act that was paid for the benefit of a dependant does not include a reference to compensation paid under subsection 17 (5).

(6) Where an employee, or a dependant of an employee, establishes, to the satisfaction of the relevant authority, that the whole or part of the State compensation referred to in subsection (2) recovered by the employee or by, or on behalf of, the dependant, as the case may be, did not relate to an injury, loss or damage, in respect of which compensation is payable under this Act, this section has effect in relation to that employee or that dependant, as the case may be, as if the amount of the State compensation recovered by that employee or that dependant were an amount equal to so much (if any) of the amount of the specified compensation as did relate to an injury, loss or damage, in respect of which compensation is payable under this Act to that employee or that dependant, as the case may be.

(7) In this section:

“State compensation” means compensation recoverable under a specified law;

“specified law” means a law of a State or of a Territory that provides for the payment of compensation, other than workers' compensation, and is declared by the Minister, by notice in writing, to be a specified law for the purposes of this Act.

Notice of departure from Australia etc.

120. (1) This section applies to a person to whom payments of compensation under section 19 are being made, and have been made for a period of 3 months or longer, by a relevant authority.

(2) Where the person proposes to leave Australia (whether or not the person proposes to return to Australia), the person may give the relevant authority a notice in writing:

- (a) stating that the person proposes to leave Australia; and
- (b) specifying the day on which the person proposes to leave.

(3) Where the person has left Australia (whether or not the person proposes to return to Australia) without giving a notice of the kind referred to in subsection (1) to the relevant authority, the person shall, within 7 days after the day on which the person left Australia, send the relevant authority a notice in writing:

- (a) stating that the person has left Australia; and
- (b) specifying the day on which the person did so.

(4) Where the person is absent from Australia for a period of more than 3 months, the person shall:

- (a) within 7 days after the expiration of the period of 3 months commencing on the day on which the person left Australia; and

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(b) within 7 days after the expiration of each successive period of 3 months (if any) ending while the person is still absent from Australia; give the relevant authority a notice in writing setting out particulars of the residential address of the person on the day on which the notice is given.

Penalty: \$500.

Disallowable instruments

121. A notice in writing under paragraph (a), (b) or (c) of the definition of "Commonwealth authority" in subsection 4 (1) or under subsection 5 (6), 26 (3), 30 (3), 57 (6), 101 (1) or 119 (7), paragraph 7 (1) (b), or subparagraph 5 (2) (c) (i) or (ii), is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Regulations

122. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed for carrying out or giving effect to this Act.

**PART X—TRANSITIONAL PROVISIONS, CONSEQUENTIAL
AMENDMENTS AND REPEALS**

Division 1—Preliminary

Interpretation

123. In this Part:

"combined benefit", in relation to a former employee, means an amount equal to the sum of:

- (a) the amount of compensation payable to the former employee under this Act; and
- (b) the employee's superannuation amount;

"commencing day" means the day on which this Part commences;

"former employee" means a person who, immediately before the commencing day, was receiving weekly payments of compensation under the 1971 Act in respect of an injury resulting in an incapacity and had ceased to be an employee within the meaning of that Act before that day;

"total benefit", in relation to a former employee, means an amount equal to the sum of:

- (a) the amount of compensation payable per week to the former employee under the 1971 Act; and
- (b) the employee's superannuation amount;

"1971 amount", in relation to a former employee, means the amount of compensation that was, immediately before the commencing day, payable per week to the former employee under the 1971 Act.

Division 2—Transitional provisions

Application of Act to pre-existing injuries

124. (1) Subject to this Part, this Act applies in relation to an injury, loss or damage suffered by an employee, whether before or after the commencing day.

(2) A person is not entitled to compensation under this Act in respect of an injury, loss or damage suffered before the commencing day if compensation was not payable in respect of that injury, loss or damage:

- (a)** where the injury, loss or damage was suffered before the commencement of the 1930 Act—under the 1912 Act;
- (b)** where the injury, loss or damage was suffered after the commencement of the 1930 Act but before the commencement of the 1971 Act—under the 1930 Act as in force when the injury, loss or damage was suffered; or
- (c)** in any other case—under the 1971 Act as in force when the injury, loss or damage was suffered.

(3) A person is not entitled to compensation under section 24 or 25 in respect of a permanent impairment, or under section 17 in respect of the death of an employee, being an impairment or death that occurred before the commencing date, if:

- (a)** the person received compensation of a lump sum in respect of that impairment or death under the 1912 Act, the 1930 Act or the 1971 Act; or
- (b)** the person was not entitled to receive compensation of a lump sum in respect of that impairment or death:
 - (i)** where the impairment or death occurred before the commencement of the 1930 Act—under the 1912 Act;
 - (ii)** where the impairment or death occurred after the commencement of the 1930 Act but before the commencement of the 1971 Act—under the 1930 Act as in force when the impairment or death occurred; or
 - (iii)** in any other case—under the 1971 Act as in force when the impairment or death occurred.

(4) The amount of compensation (if any) that a person is, by virtue of this section, entitled to receive under section 24 or 25 in respect of a permanent impairment, or under section 17 in respect of the death of an employee, being an impairment or death that occurred before the commencing day, shall be the same as the amount of the compensation that would have been payable to that person, if this Act had not been enacted, under:

- (a)** where the impairment or death occurred before the commencement of the 1930 Act—the 1912 Act;

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- (b) where the impairment or death occurred after the commencement of the 1930 Act but before the commencement of the 1971 Act—the 1930 Act as in force when the impairment or death occurred;
or
- (c) in any other case—the 1971 Act as in force when the impairment or death occurred.

(5) A person is not entitled to compensation under section 29 in respect of any period occurring before the commencing day.

(6) A person is not entitled to compensation under subsection 17 (5) in respect of the death of an employee, or under section 19, 20, 21, 22 or 31 in respect of an incapacity, where the compensation relates to a period occurring before the commencing day, if:

- (a) that person received weekly payments of compensation in respect of that death or incapacity in relation to that period under the 1912 Act, the 1930 Act or the 1971 Act; or
- (b) that person was not entitled to receive weekly payments of compensation in respect of that death or incapacity in relation to that period:
 - (i) where the death or period of incapacity occurred before the commencement of the 1930 Act—under the 1912 Act;
 - (ii) where the death or period of incapacity occurred after the commencement of the 1930 Act but before the commencement of the 1971 Act—under the 1930 Act as in force when the death or period of incapacity occurred; or
 - (iii) in any other case—under the 1971 Act as in force when the death or period of incapacity occurred.

(7) The rate of compensation (if any) that a person is, by virtue of this section, entitled to receive under subsection 17 (5) in respect of the death of an employee, or under section 19, 20, 21, 22 or 31 in respect of an incapacity, where the compensation relates to a period occurring before the commencing day, shall be the same as the rate of compensation that would have been payable to that person in relation to that period, if this Act had not been enacted, under:

- (a) where the period occurred before the commencement of the 1930 Act—the 1912 Act;
- (b) where the period occurred after the commencement of the 1930 Act but before the commencement of the 1971 Act—the 1930 Act as in force during the period; or
- (c) in any other case—the 1971 Act as in force during the period.

(8) A person is not entitled to compensation under subsection 16 (1) or (6) or section 18 in respect of any cost, the liability to pay which arose before the commencing day, or of any expenditure incurred before that day, if:

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- (a) an amount was paid in respect of that cost or expenditure under the 1912 Act, the 1930 Act or the 1971 Act; or
- (b) an amount was not payable in respect of that cost or expenditure:
 - (i) where the liability for the cost arose, or the expenditure was incurred, before the commencement of 1930 Act—under the 1912 Act;
 - (ii) where the liability arose, or the expenditure was incurred, after the commencement of the 1930 Act but before the commencement of the 1971 Act—under the 1930 Act as in force when the liability arose or the expenditure was incurred; or
 - (iii) in any other case—under the 1971 Act as in force when the liability arose or the expenditure was incurred.

(9) The amount of the compensation (if any) that is, by virtue of this section, payable under subsection 16 (1) or (6) or section 18 in respect of any cost, the liability to pay which arose before the commencing day, or of any expenditure incurred before that day, shall be the same as the amount that would have been payable in respect of that cost or expenditure, if this Act had not been enacted, under:

- (a) where the liability for the cost arose, or the expenditure was incurred, before the commencement of the 1930 Act—the 1912 Act;
- (b) where the liability arose, or the expenditure was incurred, after the commencement of the 1930 Act but before the commencement of the 1971 Act—the 1930 Act as in force when the liability arose or the expenditure was incurred; or
- (c) in any other case—the 1971 Act as in force when the liability arose or the expenditure was incurred.

(10) Where:

- (a) proceedings for the recovery of compensation under the 1912 Act, in respect of any injury suffered before the commencement of the 1930 Act, were not maintainable by a person because of section 5 of the 1912 Act;
- (b) a claim for compensation by a person under the 1930 Act, in respect of an injury suffered after the commencement of the 1930 Act but before the commencement of the 1971 Act, was not admissible because of section 16 of the 1930 Act; or
- (c) a claim for compensation by a person under the 1971 Act, in respect of an injury suffered after the commencement of the 1971 Act but before 1 July 1986, was not admissible because of section 54 of the 1971 Act, as that section was in force before 1 July 1986;

that person is not entitled to compensation under this Act in respect of that injury.

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(11) Section 48 does not apply where the damages referred to in that section were recovered before the commencing day.

(12) Section 49 does not apply in relation to a prescribed dependant who recovered the damages referred to in that section before the commencing day.

Payments under previous Acts

125. (1) Any payment made before the commencing day in respect of a liability of the Commonwealth, or of a Commonwealth authority, under the 1912 Act, the 1930 Act or the 1971 Act for an injury suffered by an employee shall, on and after that day, be deemed to have been made by the relevant authority in respect of the corresponding liability of that relevant authority to make such a payment under this Act for that injury.

(2) Without limiting the generality of subsection (1), any payment referred to in that subsection that had effect as a redemption of a liability of the Commonwealth, or of a Commonwealth authority, referred to in that subsection, has effect as a redemption under section 30 of the corresponding liability of the relevant authority under this Act.

Notices, claims etc. under previous Acts

126. (1) A notice duly served before the commencing day under:

- (a) section 5 of the 1912 Act;
- (b) section 16 of the 1930 Act; or
- (c) section 53 of the 1971 Act;

in relation to an accident or an injury, loss or damage suffered by an employee shall be taken to be a notice duly given to the relevant authority under section 53 of this Act in relation to the accident, injury, loss or damage.

(2) A claim for compensation duly made before the commencing day under the 1971 Act shall be taken to be a claim for compensation duly made to the relevant authority under this Act.

(3) Where a requirement was made under subsection 58 (1) of the 1971 Act that an employee submit himself or herself for examination by a medical referee or other legally qualified medical practitioner but the requirement had not been complied with before the commencing day, the requirement continues to have effect as if it had been made by the relevant authority under subsection 57 (1) of this Act and the medical referee or medical practitioner were a medical practitioner nominated under that subsection.

(4) An election made by an employee under subsection 103 of the 1971 Act shall:

- (a) in the case of an election to receive benefits under a determination referred to in that section—be taken to be an election under section 52 of this Act to receive benefits under that determination; or

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- (b) in the case of an election to receive compensation under that Act—
be taken to be an election made under section 52 of this Act to
receive compensation under this Act.

(5) A notice given to a person under section 102 of the 1971 Act shall,
on and after the commencing day, be taken to be a notice given by the
relevant authority to that person under section 51 of this Act.

Settlements and determinations under previous Acts

127. (1) Any settlement, whether by agreement, arbitration or judicial
decision, under the 1912 Act and in force immediately before the commencing
day, being a settlement of the liability of the Commonwealth, or of a
Commonwealth authority, to pay compensation or make any other payment
under that Act in respect of an injury shall, on and after that day, be taken
to be a determination made by the relevant authority under this Act in
respect of the corresponding liability of the relevant authority to pay
compensation or make a similar payment under this Act in respect of that
injury, but Part VI does not apply in relation to that settlement.

(2) Any determination made or action taken by the Commissioner for
Employees' Compensation under the 1930 Act or the 1971 Act and having
effect immediately before the commencing day, being a determination or
action in respect of the liability of the Commonwealth to pay compensation
or make any other payment to a person under the 1930 Act or the 1971
Act, as the case may be, shall be taken to be a determination made by the
relevant authority under this Act in respect of the corresponding liability of
that relevant authority to pay compensation or make a similar payment
under this Act to that person.

(3) Where a determination or action referred to in subsection (2) is, or
has been, varied by a court or a tribunal, subsection (2) has effect in relation
to that determination or action as so varied.

Liability under previous Acts

128. Any liability of the Commonwealth, or of a Commonwealth
authority, to pay compensation or make any other payment to a person
under any provision of the 1912 Act, the 1930 Act or the 1971 Act shall,
to the extent that it had not been discharged before the commencing day,
be taken to have been incurred by the relevant authority on that day under
the corresponding provision of this Act.

Application for review and other proceedings under previous Acts

129. (1) Where a person was, immediately before the commencing day,
entitled to apply to the Administrative Appeals Tribunal for review of a
determination under the 1971 Act but had not made such an application
before that day, Part VI of this Act applies as if:

- (a) the person were a claimant under this Act; and

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- (b) the reference in subsection 62 (3) to 30 days after the day on which the determination first came to the notice of the claimant were a reference to 30 days after the commencing day.

(2) Where the Commonwealth is a party to any proceedings relating to any matter arising under the 1912 Act, the 1930 Act or the 1971 Act (including proceedings under Part V of the 1971 Act), being proceedings instituted but not completed before the commencing day, those proceedings may be continued on and after that day and, where the proceedings are so continued, the relevant authority and the Commonwealth shall be parties to those proceedings.

Money and investments held under 1971 Act

130. All money and investments held immediately before the commencing day for the benefit of a person or persons by the Commissioner for Employees' Compensation under the 1971 Act are, by force of this section, vested in the relevant authority and shall be held by that authority for the benefit of that person or those persons, as the case may be.

Division 3—Special transitional provisions relating to certain former employees

Former employees under 65 who are in receipt of superannuation benefits

131. (1) This section applies in relation to a former employee who, on the commencing day, is under 65 and in receipt of a pension under a superannuation scheme.

(2) Subject to this Division, if the former employee's total benefit immediately before the commencing day was equal to or more than 95% of his or her normal weekly earnings as at that day, the amount of compensation payable per week to the former employee under this Act is the amount that, when added to the former employee's superannuation amount, results in a combined benefit equal to 95% of those normal weekly earnings.

(3) Subject to this Division, if the former employee's total benefit immediately before the commencing day was equal to or more than 70%, but less than 95%, of his or her normal weekly earnings as at that day, the amount of compensation payable per week to the former employee under this Act is an amount equal to the employee's 1971 amount.

(4) Subject to this Division, if the former employee's total benefit immediately before the commencing day was less than 70% of his or her normal weekly earnings as at that day, the amount of compensation payable per week to the former employee under this Act is the amount that, when added to the former employee's superannuation amount, results in a combined benefit equal to 70% of his or her normal weekly earnings for the time being.

(5) Whenever the superannuation amount of a former employee referred to in subsection (2) or (3) is increased, the amount of compensation payable

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under that subsection shall be reduced, or further reduced, as the case requires, by:

- (a) an amount equal to the amount of the increase; or
- (b) an amount that will result in a combined benefit equal to 70% of the former employee's normal weekly earnings as at the date of the increase;

whichever is less.

(6) Subsection (5) does not require a reduction or further reduction in the amount of compensation payable to a former employee under subsection (2) or (3) where the reduction or further reduction would result in a combined benefit of less than 70% of the employee's normal weekly earnings as at the date of the increase in the superannuation amount.

Former employees under 65 who are not in receipt of superannuation benefits

132. (1) This section applies in relation to a former employee who, on the commencing day, is under 65 and not in receipt of a pension under a superannuation scheme.

(2) Subject to this Division, if the former employee's 1971 amount was equal to or more than 95% of his or her normal weekly earnings as at the commencing day, the amount of compensation payable per week to the former employee under this Act is an amount equal to 95% of those normal weekly earnings.

(3) Subject to this Division, if the former employee's 1971 amount was equal to or more than 70%, but less than 95%, of his or her normal weekly earnings as at the commencing day, the amount of compensation payable per week to the former employee under this Act is an amount equal to the 1971 amount.

(4) Subject to this Division, if the former employee's 1971 amount was less than 70% of his or her normal weekly earnings as at the commencing day, the amount of compensation payable per week to the former employee under this Act is an amount equal to 70% of those normal weekly earnings.

(5) Where, as a result of an increase in the amount of a former employee's normal weekly earnings, the amount of compensation payable to the former employee under subsection (2) or (3) is less than 70% of those increased normal weekly earnings, that amount of compensation shall be increased, or further increased, as the case requires, until it is equal to 70% of those increased normal weekly earnings.

Minimum benefit payable

133. (1) Where:

- (a) the amount of combined benefit that would, but for this section, be payable to a former employee under section 131; or

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(b) the amount of compensation that would, but for this section, be payable to a former employee under section 132; is less than the minimum earnings, that amount of combined benefit or compensation, as the case may be, shall be increased by an amount equal to the difference between that amount and the minimum earnings.

(2) In this section:

“minimum earnings”, in relation to a former employee, has the same meaning as that expression has in relation to employees under section 19.

Reduction of compensation on reaching 65

134. When a former employee to whom section 131 or 132 applies reaches 65, the amount of compensation payable per week to the former employee but for this section shall be reduced by an amount calculated under the formula:

$$\frac{5 \times (65 - A)}{100} \times C$$

where:

A is the age of the former employee, expressed in completed years, as at the commencing day; and

C is that amount of compensation payable per week to the former employee.

Former employees 65 and over who are in receipt of superannuation benefits

135. (1) This section applies in relation to a former employee who, on the commencing day, is at least 65 and is in receipt of a pension under a superannuation scheme.

(2) The amount of compensation payable per week to the former employee under this Act is an amount equal to the employee's 1971 amount.

Former employees 65 and over who are not in receipt of superannuation benefits

136. (1) This section applies in relation to a former employee who, on the commencing day, is at least 65 and is not in receipt of a pension under a superannuation scheme.

(2) The amount of compensation payable per week to the former employee under this Act is an amount equal to the employee's 1971 amount.

Redemption on request by former employees

137. (1) Where:

(a) a relevant authority is liable to make weekly payments of compensation to a former employee in respect of an injury resulting in an incapacity; and

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(b) the amount of those payments is \$50 per week or less; the relevant authority shall, on written request by the former employee, make a determination that its liability to make further payments to the employee be redeemed by the payment to the employee of a lump sum.

(2) The amount of the lump sum is the amount calculated in accordance with the formula:

$$52 \times ((AW \times NY) - SR \times (AW \times NY))$$

where:

- AW** is the amount per week payable to the former employee at the date of the determination;
- NY** is the number of years in the complete expectation of life of the former employee at the date of the determination, as ascertained by reference to the Australian Life Tables as published from time to time by the Australian Statistician; and
- SR** is the rate specified by the Minister for the purposes of subsection 30 (2).

Division 4—Consequential amendments

Consequential amendments

138. The Acts specified in the Schedule are amended as set out in the Schedule.

Division 5—Repeals

Repeals

139. The following Acts are repealed:

Compensation (Commonwealth Employees) Act 1971

Compensation (Commonwealth Employees) Act 1972

Compensation (Australian Government Employees) Act 1973

Compensation (Australian Government Employees) Act 1974

Compensation (Commonwealth Government Employees) Amendment Act 1976

Compensation (Commonwealth Government Employees) Amendment Act 1978

Compensation (Commonwealth Government Employees) Amendment Act 1979.

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Section 138

CONSEQUENTIAL AMENDMENTS

Air Accidents (Commonwealth Government Liability) Act 1963

Paragraph 10 (2) (a):

Omit "*Compensation (Commonwealth Government Employees) Act 1971*", substitute "*Commonwealth Employees' Rehabilitation and Compensation Act 1988*".

Paragraph 10 (3) (a):

Omit "99 or 100 of the *Compensation (Commonwealth Government Employees) Act 1971*", substitute "Part IV of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*".

Subparagraph 11 (1) (a) (i):

Omit "*Compensation (Commonwealth Government Employees) Act 1971*", substitute "*Commonwealth Employees' Rehabilitation and Compensation Act 1988*".

Paragraph 15 (2) (a):

Omit "*Compensation (Commonwealth Government Employees) Act 1971*", substitute "*Commonwealth Employees' Rehabilitation and Compensation Act 1988*".

Paragraph 15 (3) (a):

Omit "99 or 100 of the *Compensation (Commonwealth Government Employees) Act 1971*", substitute "Part IV of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*".

Anglo-Australian Telescope Agreement Act 1970

Subsection 16 (1):

Omit "*Compensation (Commonwealth Employees) Act 1971*", substitute "*Commonwealth Employees' Rehabilitation and Compensation Act 1988*".

Subsection 16 (2):

- (a) Omit "*Compensation (Commonwealth Employees) Act 1971*", substitute "*Commonwealth Employees' Rehabilitation and Compensation Act 1988*".
- (b) Omit "Commonwealth", substitute "Commission or a relevant authority".

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Australian National Railways Commission Act 1983

Subsection 47 (1):

- (a) Omit “Commissioner” (wherever occurring), substitute “Commission”.
- (b) Omit “section 54 of the *Compensation (Commonwealth Government Employees) Act 1971*”, substitute “section 54 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.
- (c) Omit “Part III of that Act and section 98 of that Act were omitted”, substitute “Part II of that Act”.

Paragraph 47 (2) (a):

Omit “him”, substitute “the employee”.

Paragraph 47 (2) (b):

Omit “*Compensation (Commonwealth Government Employees) Act 1971*”, substitute “*Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

Paragraph 47 (2) (c):

Omit “Part III of that Act and section 98 of that Act were omitted”, substitute “Part II of that Act”.

Subsection 47 (4):

Omit the subsection, substitute the following subsection:

“(4) In the application of the modified Commonwealth Employees' Rehabilitation and Compensation Act (in this subsection called ‘the Act’) in relation to a claim for compensation:

- (a) unless the contrary intention appears, expressions used in that part of the Act that comprises the applied South Australian provisions have the same respective meanings as they have in the Workers Compensation Act;
- (b) expressions used in the Act (other than in that part of the Act that comprises the applied South Australian provisions) that are also used in the applied South Australian provisions have the same respective meanings as they have in the applied South Australian provisions; and
- (c) in that part of the Act that comprises the applied South Australian provisions:
 - (i) a reference to the Court shall be read as a reference to the Commission; and
 - (ii) a reference to a workman shall be read as a reference to a transferred South Australian employee.”.

Paragraph 47 (5) (a):

- (a) Omit “his”, substitute “the employee’s”.

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(b) Omit “Commissioner”, substitute “Commission”.

Paragraph 47 (5) (c):

Omit “*Compensation (Commonwealth Government Employees) Act 1971*”, substitute “*Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

Paragraph 47 (5) (d):

Omit “*Compensation (Commonwealth Government Employees) Act 1971*”, substitute “*Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

Subparagraph 47 (5) (d) (ii):

Omit “*Compensation (Commonwealth Government Employees) Act 1971*”, substitute “*Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

Paragraph 47 (5) (e):

- (a) Omit “Commissioner”, substitute “Commission”.
- (b) Omit “*Compensation (Commonwealth Government Employees) Act 1971*”, substitute “*Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

Subsection 47 (6):

- (a) Omit “*Compensation (Commonwealth Government Employees) Act*” (wherever occurring), substitute “*Commonwealth Employees' Rehabilitation and Compensation Act*”.
- (b) Omit “is imposed”, substitute “was imposed”.
- (c) Omit “applies”, substitute “applied”.

Subsection 47 (7):

Omit “section 123 of the *Compensation (Commonwealth Government Employees) Act 1971*”, substitute “section 122 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

Subsection 47 (8) (definitions of “applied South Australian provisions”, “Commissioner” and “modified Compensation (Commonwealth Government Employees) Act”):

Omit the definitions, substitute the following definitions:

“‘applied South Australian provisions’ means the provisions of Parts II, IV and VIII of, and the Second Schedule to, the Workers Compensation Act, and the provisions of any regulations and Proclamations in force immediately before 30 September 1987 for the purposes of those Parts and that Schedule, as modified by:

- (a) regulations made under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* for the purpose

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of enabling matters connected with the payment of compensation in relation to transferred South Australian employees in accordance with those provisions to be dealt with under Parts I, III, IV, V, VI, VII, IX and X of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*; and

(b) regulations made under this Act for the purposes of subsection (8);

'Commission' means the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees established by section 68 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*;

'modified Commonwealth Employees' Rehabilitation and Compensation Act' means the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* modified by the substitution of the applied South Australian provisions for Part II of that Act;".

Subsection 48 (1):

(a) Omit "subsection 45 (7) or 46 (3) of the *Compensation (Commonwealth Government Employees) Act 1971*", substitute "sections 20 and 21 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*".

(b) Omit "or provident scheme established or maintained by the Commonwealth", substitute "scheme".

After section 48:

Insert the following section in Division 3:

Transitional provisions

"48A. (1) In this section:

'commencing day' means the day on which section 138 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* commences;

'Commission' has the same meaning as it has in the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*;

'Commissioner' has the same meaning as it had in the *Compensation (Commonwealth Government Employees) Act 1971* as in force immediately before the commencing day;

'instrument' means any instrument (including rules, regulations and by-laws) made, granted or issued pursuant to any Act;

'modified 1971 Act' means the modified *Compensation (Commonwealth Government Employees) Act* within the meaning of section 47 as in force immediately before the commencing day;

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'modified 1988 Act' means the modified Commonwealth Employees' Rehabilitation and Compensation Act within the meaning of section 47.

“(2) In this section, a reference to a thing done by, or in relation to, the Commissioner, includes a reference to a thing done by, or in relation to, a delegate of the Commissioner.

“(3) Any act or thing done at any time before the commencing day by, or in relation to, the Commissioner, being an act or thing done pursuant to, or in relation to, the functions or powers of the Commissioner under the modified 1971 Act, shall, on and after that day, have the same effect as it would have if it had been done by, or in relation to, the Commission pursuant to, or in relation to, the corresponding functions or powers of the Commission under the modified 1988 Act.

“(4) Any act or thing done at any time before the commencing day by, or in relation to, the Commonwealth, being an act or thing done under the modified 1971 Act shall, on and after that day, have the same effect as it would have if it had been done by, or in relation to, the Commission pursuant to, or in relation to, the functions or powers of the Commission under the modified 1988 Act.

“(5) Any liability of the Commonwealth to pay compensation or make any other payment to a person under the modified 1971 Act shall, to the extent that it has not been discharged before the commencing day, be deemed to have been incurred by the Commission on that day under the corresponding provision of the modified 1988 Act.

“(6) Any act or thing done at any time before the commencing day by, or in relation to, an employee, being an act or thing done under the modified 1971 Act, shall, on and after that day, have the same effect as it would have if it had been done by, or in relation to, the employee pursuant to, or in relation to, the modified 1988 Act.

“(7) An election served on the Commissioner by a transferred South Australian employee under subsection 47 (1) as in force at any time before the commencing day shall be deemed to be an irrevocable election served on the Commission by that employee on that day under subsection 47 (1) as in force on that day.

“(8) Where a person was, immediately before the commencing day, entitled to apply to the Administrative Appeals Tribunal under the modified 1971 Act, but had not made such an application before that day, Part VI of the modified 1988 Act applies as if:

- (a) the person were a claimant under the modified 1988 Act; and
- (b) the reference in subsection 62 (3) of the modified 1988 Act to 30 days after the day on which the determination first came to the

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notice of the claimant were a reference to 30 days after the commencing day.

“(9) Where, immediately before the commencing day, there were pending in any court or tribunal any proceedings relating to any matter arising under the modified 1971 Act to which the Commonwealth was a party, those proceedings may be continued after the commencing day and, where those proceedings are so continued, the Commission and the Commonwealth shall be parties to those proceedings.

“(10) A reference in any instrument to the Commissioner shall, in relation to any act or thing done, or to be done, after the commencing day, be read as a reference to the Commission.

“(11) All money and investments held immediately before the commencing day for the benefit of a transferred South Australian employee by the Commissioner under the modified 1971 Act are, by force of this subsection, vested in the Commission and shall be held by the Commission for the benefit of that person.”.

Paragraph 50 (2) (a):

Omit “*Compensation (Commonwealth Government Employees) Act 1971*”, substitute “*Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

Commonwealth Teaching Service Act 1972

Paragraph 39 (2) (a):

Omit “*Compensation (Australian Government Employees) Act 1971-1973*”, substitute “*Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

Conciliation and Arbitration Act 1904

Paragraph 41A (1) (a):

Omit “*Compensation (Commonwealth Government Employees) Act 1971*”, substitute “*Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

Defence Act 1903

Paragraph 58B (1) (b):

Omit “*Compensation (Commonwealth Government Employees) Act 1971*”, substitute “*Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

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Subsection 120B (16) (definition of “salary”):

Omit “*Compensation (Commonwealth Government Employees) Act 1971*”, substitute “*Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

Health Insurance Commission Act 1973

Subsection 28A (4):

Omit “*Compensation (Commonwealth Government Employees) Act 1971*”, substitute “*Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

Income Tax Assessment Act 1936

Paragraph 16 (4) (g):

Omit the paragraph, substitute the following paragraph:

“(g) the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees established by section 68 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* for the purposes of that Act;”.

Paragraph 23AB (5) (a):

Omit the paragraph, substitute the following paragraph:

“(a) a payment of compensation under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* in respect of the incapacity, impairment or death of a taxpayer;”.

Paragraphs 23AB (5) (b) and (c):

After “incapacity” insert “, impairment”.

National Crime Authority Act 1984

Schedule:

Omit “*Compensation (Commonwealth Government Employees) Act 1971*, section 24A”.

Postal Services Act 1975

Paragraph 70 (2) (a):

Omit “*Compensation (Commonwealth Government Employees) Act 1971*”, substitute “*Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

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Public Service Act 1922

Subsection 64 (18) (definition of “salary”):

Omit “*Compensation (Commonwealth Government Employees) Act 1971*”, substitute “*Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

Sex Discrimination Act 1984

Paragraph 40 (2) (b):

Omit the paragraph.

Social Security Act 1947

Subsection 72 (1) (definition of “compensation payment”):

Omit “section 45, 46 or 50 of the *Compensation (Commonwealth Government Employees) Act 1971*”, substitute “section 19, 20, 21, 22 or 31 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

Telecommunications Act 1975

Paragraph 67 (2) (a):

Omit “*Compensation (Australian Government Employees) Act 1971-1974*”, substitute “*Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

Veterans' Entitlements Act 1986

Subsection 76 (6):

Omit “section 102 of the *Compensation (Commonwealth Government Employees) Act 1971*”, substitute “section 51 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*”.

[*Minister's second reading speech made in—
House of Representatives on 27 April 1988
Senate on 24 May 1988*]