



Commonwealth Employment (Miscellaneous Amendments) Act 1992

No. 95 of 1992

An Act to amend the law relating to rehabilitation, workers' compensation and occupational health and safety in respect of persons employed by the Commonwealth and Commonwealth authorities, and for related purposes

[Assented to 30 June 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Commonwealth Employment (Miscellaneous Amendments) Act 1992*.

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

Commencement

2.(1) This Part commences on the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), the provisions of Divisions 1, 2 and 3 of Part 2, and the provisions of Part 6, commence on a day to be fixed by Proclamation. 5

(3) If the provisions referred to in subsection (2) do not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, those provisions commence on the first day after the end of that period. 10

(4) Division 4 of Part 2 and Part 4 are taken to commence, or to have commenced, as the case may be, on the day fixed under subsection 2(2) of the *Industrial Relations Legislation Amendment Act (No. 3) 1991*.

(5) Part 3 is taken to have commenced on 27 June 1991. 15

(6) Subject to subsection (7), Part 5 commences on a day to be fixed by Proclamation.

(7) If Part 5 does not commence under subsection (6) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, that Part commences on the first day after the end of that period. 20

**PART 2—AMENDMENTS OF THE COMMONWEALTH
EMPLOYEES' REHABILITATION AND COMPENSATION ACT
1988 AND RELATED TRANSITIONAL PROVISIONS**

Division 1—Introductory 25

Principal Act

3. In this Part, “Principal Act” means the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*¹.

Division 2—Amendments relating to the licensing of authorities

Interpretation 30

4. Section 4 of the Principal Act is amended:

- (a) by omitting “(other than an administering authority)” from the definition of “exempt authority” in subsection (1);
- (b) by omitting “an administering authority” from paragraph (b) of the definition of “rehabilitation authority” in subsection (1) and substituting “a licensed authority”; 35
- (c) by omitting subparagraph (c)(ii) of the definition of

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

“Commonwealth authority” in subsection (1) and substituting the following subparagraph:

“(ii) in which:

- 5 (A) the Commonwealth has a controlling or substantial interest; or
(B) a Territory (other than the Northern Territory) or a body corporate referred to in paragraph (a) or (b) has a controlling interest; and”;

10 (d) by omitting paragraph (a) of the definition of “relevant authority” in subsection (1) and substituting the following paragraph:

“(a) in relation to an employee who is employed by a licensed authority—that authority; and”;

15 (e) by omitting the definitions of “administering authority” and “principal officer” from subsection (1) and substituting the following definitions:

20 “**‘administering authority’** means a Commonwealth authority that, immediately before the repeal of Part VIII, was an administering authority under that Part;

“**‘principal officer’**, in relation to a Commonwealth authority, means:

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

30 (f) by inserting in subsection (1) the following definitions:

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

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

‘licence’ means a licence under Part VIIIA;

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

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

'previous Commission' means the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees that was established under section 68 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* as amended and in force immediately before the commencement of Part 2 of the *Industrial Relations Legislation Amendment Act (No. 3) 1991*; 5

'substantial interest', in relation to a body corporate, means an interest (other than a controlling interest) in the body corporate that enables the person holding the interest to cast, or control the casting of, a number of votes at a general meeting of the body corporate that is equal to or greater than the number of votes which may be cast, or whose casting may be controlled, by any other single person;"; 10 15

(g) by omitting from subsection (10) "an administering" and substituting "a licensed".

Employees

5. Section 5 of the Principal Act is amended by omitting from subsection (9) "or an administering authority" and substituting ", an administering authority or a licensed authority". 20

Approved guide

6. Section 28 of the Principal Act is amended:

(a) by omitting from subsection (4) "an administering" and substituting "a licensed"; 25

(b) by omitting from subsection (4) "the administering" and substituting "the licensed".

Approved rehabilitation program providers

7. Section 34 of the Principal Act is amended: 30

(a) by omitting subsection (2);

(b) by omitting "or an administering authority" from subsections (3) and (4).

Provision of rehabilitation programs

8. Section 37 of the Principal Act is amended by omitting from subsection (2) "(other than an administering authority)". 35

Interpretation

9. Section 60 of the Principal Act is amended:

(a) by omitting "an administering" from the definition of "determination" in subsection (1) and substituting "a licensed"; 40

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

- (b) by omitting “an administering” from paragraph (b) of the definition of “determining authority” in subsection (1) and substituting “a licensed”;
- 5 (c) by omitting “an administering” from paragraph (2)(c) and substituting “a licensed”.

Functions

10 **10.** Section 69 of the Principal Act is amended by inserting after paragraph (e) the following paragraph:

“(ea) to collect on behalf of the Commonwealth any premiums that are payable into the Consolidated Revenue Fund in accordance with a direction by the Minister under section 96G;”.

11. After section 70 of the Principal Act the following section is inserted:

15 **Comcare may charge for certain services**

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

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

Power to obtain information from Departments and authorities

12. Section 71 of the Principal Act is amended by omitting from subsection (1) “(other than an administering authority)”.

Guidelines by Commission

30 **13.** Section 73A of the Principal Act is amended:

- (a) by omitting “an administering” from subsection (2) and substituting “a licensed”;
- (b) by omitting “the administering” from subsection (2) and substituting “the licensed”;
- 35 (c) by omitting “An administering” from subsection (6) and substituting “A licensed”.

Functions

14. Section 89B of the Principal Act is amended by omitting “the administering” from paragraph (a) and substituting “a licensed”.

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

Constitution

15. Section 89E of the Principal Act is amended by omitting “administering” from paragraphs (1)(d) and (e) and substituting “licensed”.

Appointment

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16. Section 89F of the Principal Act is amended by omitting “administering” from subsection (2) and substituting “licensed”.

Annual reports

17. Section 89S of the Principal Act is amended by omitting “administering” from paragraph (2)(c) and substituting “licensed”.

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18. After section 90 of the Principal Act the following sections are inserted:

How premiums collected by Comcare are to be dealt with

“90A.(1) Any premium collected by Comcare under paragraph 69(ea) is to be paid into a bank account kept by Comcare under section 63J of the *Audit Act 1901* as it applies to Comcare by section 90 of this Act but an amount equal to that premium is to be paid by Comcare to the Commonwealth within 7 days after the day on which the premium is collected by Comcare.

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“(2) Transactions referred to in subsection (1) are to be shown in the accounts and records kept by Comcare under section 63K of the *Audit Act 1901* as it applies to Comcare by section 90 of this Act.

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“(3) Any amount paid by Comcare to the Commonwealth under subsection (1) in respect of a premium collected by Comcare is taken, for the purposes of this Act, to constitute payment of the premium into the Consolidated Revenue Fund.

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Payments to Comcare in respect of liabilities under Part X

“90B. There are payable to Comcare, out of the Consolidated Revenue Fund, such amounts as are necessary:

(a) to enable Comcare to discharge any liability that is taken, by section 128, to have been incurred by Comcare and has not been discharged before the commencement of this section; and

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(b) to meet any administrative expenses incurred by Comcare after the commencement of this section that are attributable to the performance by Comcare of its functions in respect of claims for injury, loss or damage suffered by, or for the death of, employees before the commencement of Part X.

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*Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992*

Payments to Comcare in respect of other liabilities

“90C.(1) Subject to this section, there are payable to Comcare, out of the Consolidated Revenue Fund, such amounts as are necessary:

(a) to enable Comcare to discharge:

5 (i) any liability (other than a liability referred to in paragraph 90B(a)) that was incurred by Comcare or the previous Commission under this Act before the commencement of this section and has not been discharged before that commencement; and

10 (ii) any liability that Comcare incurs under this Act after that commencement; and

(b) to meet any administrative expenses incurred by Comcare after that commencement that are attributable to the performance by Comcare of its functions in respect of claims for injury, loss or damage suffered by, or for the death of, employees on or after 1 July 1989.

20 “(2) A payment (**‘the relevant payment’**) is not to be made to Comcare under subsection (1) if the sum of the amount of the relevant payment and the amounts previously paid to Comcare or the previous Commission on or after 1 July 1989 for the purposes of the performance of their functions under this Act would exceed an amount worked out in accordance with the formula:

Premiums received + Notional interest – Previous payments

where:

25 **‘Premiums received’** means the total of the amounts of the premiums paid into, or transferred within, the Consolidated Revenue Fund on and after 1 July 1989 and before the relevant payment is made in accordance with a direction of the Minister under section 96G;

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

35 **‘Previous payments’** means the total of the amounts paid to the previous Commission or to Comcare for the purposes of the performance of their functions under this Act before the relevant payment is made.

40 “(3) For the purposes of the application at any time after the commencement of this section of the formula referred to in subsection (2), the Minister for Finance may determine:

(a) the total of the amounts of the premiums paid into, or transferred within, the Consolidated Revenue Fund during the

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

period commencing on 1 July 1989 and ending immediately before the commencement of this section; and

(b) the notional interest that would have accrued in respect of that period; and

(c) the total of the amounts paid to the previous Commission or to Comcare for the purposes of the performance of their functions under this Act during that period. 5

“(4) In this section:

‘premium’ includes a contribution paid by a Department or Commonwealth authority under section 98 of the *Commonwealth Employees’ Rehabilitation and Compensation Act 1988*, or of that Act as amended, as that section applied in respect of financial years that ended before 1 July 1991. 10

Appropriation

“90D. The Consolidated Revenue Fund is appropriated for the purposes of sections 90B and 90C.”. 15

Money of Comcare

19. Section 91 of the Principal Act is amended:

(a) by inserting “otherwise than under section 90D” in subsection (1) after “Parliament”; 20

(b) by inserting in subsection (2) “section 90B or 90C or” before “subsection”;

(c) by omitting paragraph (4)(a) and substituting the following paragraph:

“(a) on fixed deposit with the Reserve Bank of Australia or with another bank approved by the Treasurer for the purposes of this paragraph; or”. 25

20. Section 96 of the Principal Act is repealed and the following section is substituted:

Estimates of premiums 30

“96. The Commission must prepare an estimate, in such form as the Minister directs, of the amount (if any) of premium of each Department or Commonwealth authority for the financial year starting on 1 July 1992 and for each later financial year.”.

Amount of premium 35

21. Section 96A of the Principal Act is amended by omitting the definitions of “Estimated liability” and “Estimated administrative costs” and substituting the following definitions:

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

“**‘Estimated liability’** means the estimated amount of Comcare’s liability under this Act in respect of the number of injuries that the Commission estimates will be sustained:

- 5 (a) in the case of a Department, or in the case of an authority that, at the commencement of that financial year, does not hold a licence in force under Part VIIIA—by employees of the Department or authority during that financial year; and
- 10 (b) in the case of an authority that, at the commencement of that financial year, holds such a licence—by employees of the authority during that financial year in respect of whom Comcare is liable to pay the whole or a part of the compensation payable in respect of those injuries;

being an amount estimated by the Commission using such methods and having regard to such matters (if any) as the Minister directs;

15 **‘Estimated administrative costs’** means the estimated administrative costs of Comcare during that financial year that are reasonably attributable to the Department or authority, having regard to:

- 20 (a) in the case of a Department, or in the case of an authority that, at the commencement of that financial year, does not hold a licence in force under Part VIIIA—the estimated number of claims made in respect of those injuries; or
- 25 (b) in the case of an authority that, at the commencement of that financial year, holds such a licence—the estimated number of claims made in respect of those injuries in relation to which Comcare will be required to perform any functions under this Act.”.

Information to be given to Commission

22. Section 96C of the Principal Act is amended by omitting from subsection (2) “(other than an administering authority)”.

30 **Variation of estimate**

23. Section 96H of the Principal Act is amended by adding at the end of subsection (1):

“; or (e) in the case of an authority:

- 35 (i) a licence is, or is to be, granted to the authority; or
- (ii) a licence held by the authority is, or is to be, revoked.”.

Repeal of Part VIII

24. Part VIII of the Principal Act is repealed.

25. Before Part IX of the Principal Act the following Part is inserted:

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

**“PART VIII—LICENCES TO AUTHORITIES TO ACCEPT
LIABILITY FOR PAYMENT OF, AND TO DETERMINE,
CLAIMS**

Object

“107A. The object of this Part is to provide for the licensing of certain Commonwealth authorities for the purpose of doing either or both of the following: 5

- (a) transferring to them the whole or a part of the liability to pay compensation in respect of some or all of their employees;
- (b) transferring to them the function of determining certain claims for compensation in respect of some or all of their employees. 10

Interpretation

“107B. In this Part, unless the contrary intention appears:

‘claim’ includes a request;

‘determination’ includes a decision or requirement; 15

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

Classes of licence

“107C. There are to be 3 classes of licences that may be granted for the purposes of this Part, namely Class 1 Licences, Class 2 Licences and Class 3 Licences. 20

Application for licence

“107D.(1) A Commonwealth authority may apply to the Commission for a licence under this Part. 25

“(2) The application must:

- (a) be in writing in such form as the Commission approves; and
- (b) specify the class of licence applied for; and
- (c) be signed by the principal officer of the authority; and
- (d) be accompanied by such documents as the Commission directs; 30
- and
- (e) be lodged at, or sent by post to, the office of the Commission.

“(3) The authority is liable to pay to the Commonwealth in respect of the application an application fee equal to the amount estimated by the Commission to be the cost of considering the application. 35

“(4) The Commission is to give written notice to the authority of the amount of the application fee and:

- (a) if the notice is given before the application is made—the application fee is to accompany the application; or

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

- (b) otherwise—the application fee is to be paid as soon as practicable after the notice is given.

Consideration of application

5 “107E.(1) The Commission must consider the application in accordance with the criteria applicable in respect of the class of licence applied for and must give written notice to the Commonwealth authority of the Commission’s decision on the application.

“(2) A notice given to an authority is to include brief particulars of the reasons for the Commission’s decision.

10 **Criteria for grant of licences**

“107F.(1) This section sets out the criteria to be considered by the Commission in deciding an application by a Commonwealth authority for a licence.

“(2) The criteria for a Class 1 Licence are:

- 15 (a) whether the authority is likely to have sufficient financial resources to discharge its liability to pay compensation in respect of its employees; and
(b) any other matters that the Commission considers relevant.

“(3) The criteria for a Class 2 Licence are:

- 20 (a) whether the authority is likely to be able to meet the standards set by the Commission for the management of claims for compensation and the rehabilitation of employees; and
(b) the likely attitude of employees of the authority to the grant of such a licence; and
25 (c) any other matters that the Commission considers relevant.

“(4) The criteria for a Class 3 Licence are the same as the criteria for a Class 1 Licence and a Class 2 Licence.

Conditions of licence

“107G.(1) A licence is subject to:

- 30 (a) a condition that the authority will comply with the requirements of this Act that are applicable to it; and
(b) without limiting the generality of paragraph (a), a condition that the authority will pay any fees referred to in section 107R that are applicable to it; and
35 (c) such other conditions as the Commission determines when granting the licence.

“(2) At any time while a licence is in force the Commission may vary the conditions to which the licence is subject under paragraph (1)(c).

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

“(3) Without limiting the conditions to which a licence may be subject, a licence may be subject to any one or more of the following conditions:

- (a) a condition that the licence applies only in respect of claims made by a specified class of employees of the authority, for example employees employed in a particular State or Territory; 5
- (b) a condition that, if both the authority and Comcare are parties to any proceedings (including proceedings under Part VI) in relation to a matter arising under this Act, the authority will not cause or permit to be made on its behalf to the court or tribunal concerned any submission that Comcare or the Commission has requested the authority not to make; 10
- (c) in the case of a Class 1 Licence or a Class 3 Licence:
 - (i) a condition that the liability of the authority to pay compensation, or make any other payments, under this Act in relation to a claim in respect of an injury, loss or damage suffered by, or in respect of the death of, an employee of the authority is not to exceed a specified amount; 15
 - (ii) a condition that the authority will obtain such bank or other guarantees or other securities as the Commission directs for the due discharge of the authority’s liability in respect of claims, or particular classes of claims, under this Act or in respect of so much of that liability as exceeds a specified amount; 20
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 - (iii) a condition that the authority will maintain such funds, and in such form, as the Commission directs for the purpose of enabling the due discharge of the authority’s liability in respect of claims, or particular classes of claims, under this Act or in respect of so much of that liability as exceeds a specified amount; 30
- (d) in the case of a Class 2 Licence or a Class 3 Licence:
 - (i) a condition that the responsibility of the authority for determining claims does not extend to making a determination that would involve the payment of an amount which, or amounts the total of which, exceeds a specified amount; 35
 - (ii) a condition that the reconsideration of determinations made by the authority is to be carried out by employees of the Commonwealth or of another Commonwealth authority. 40

“(4) If the Commission varies any of the conditions to which a licence is subject:

- (a) the Commission must give to the holder of the licence, and

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

cause to be published in the *Gazette*, a notice setting out the variations; and

- (b) it is not necessary for the licence to be amended to include the variations.

- 5 “(5) A variation of a condition to which a licence is subject takes effect when the notice referred to in paragraph (4)(a) is published in the *Gazette*.

Duration of licence

- 10 “107H.(1) A licence comes into force on the date of publication in the *Gazette* of the notice referred to in paragraph 107J(1)(a) and continues in force for such period as the Commission determines.

 “(2) The Commission may extend a licence for such period or periods as the Commission determines.

Grant of licence

- 15 “107J.(1) If the Commission decides to grant a licence to a Commonwealth authority, the Commission must:

- (a) cause to be published in the *Gazette* a notice:

- (i) stating that the licence has been granted to the authority; and
20 (ii) specifying the period of the licence; and
 (iii) setting out any conditions to which the licence is subject under paragraph 107G(1)(c); and

- (b) issue the licence to the authority.

 “(2) The licence must:

- 25 (a) be in such form as the Commission determines; and
 (b) specify the class of licence; and
 (c) specify the date of commencement of the licence and the period of the licence; and
30 (d) set out any conditions to which the licence is subject under paragraph 107G(1)(c).

Effect of grant of Class 1 Licence

 “107K.(1) If a Commonwealth authority is granted a Class 1 Licence, the following provisions have effect in respect of employees of the authority to whom the licence relates (**‘relevant employees’**).

- 35 “(2) Subject to subsection (3), the authority is liable to pay compensation, or make any other payments, under this Act in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee after the licence comes into force, and Comcare is not liable to pay that compensation or make those other payments.

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

“(3) If the licence is subject to a condition that the liability of the authority to pay compensation, or make any other payments, under this Act in relation to a claim in respect of an injury, loss or damage suffered by, or in respect of the death of, an employee of the authority is not to exceed a specified amount: 5

(a) the authority’s liability in respect of such a claim does not exceed that amount; and

(b) Comcare continues to be liable to pay compensation, or make any other payments, under this Act in respect of such a claim to the extent to which the authority is not liable under paragraph (a) to pay that compensation or make those other payments. 10

“(4) The imposition by this section of any liability on a Commonwealth authority in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee does not render the authority liable to have any proceedings (including proceedings under Part VI) brought against it in respect of the injury, loss, damage or death but, if any such proceedings are brought against Comcare in respect of the injury, loss, damage or death, Comcare must tell the authority as soon as practicable that the proceedings have been brought so that the authority may apply to become a party to the proceedings. 15 20

“(5) A decision in any proceedings referred to in subsection (4) is binding on both Comcare and the authority, whether or not the authority becomes a party to the proceedings.

Effect of grant of Class 2 Licence

“107L.(1) If a Commonwealth authority is granted a Class 2 Licence, the following provisions have effect in respect of employees of the authority to whom the licence relates (**‘relevant employees’**). 25

“(2) Subject to subsection (3), the authority has the responsibility for determining claims for compensation or for other payments under this Act in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee, whether the injury, loss, damage or death occurred before or after the licence comes into force, but Comcare continues to be liable to pay that compensation or make those other payments. 30

“(3) If the licence is subject to a condition that the responsibility of the authority for determining claims does not extend to making a determination that would involve the payment of an amount which, or amounts the total of which, exceeds a specified amount: 35

(a) the authority’s responsibility for determining claims is limited accordingly; and 40

(b) if the authority makes a determination in the expectation that the amount, or the total of the amounts, payable under the determination will not exceed the specified amount but the

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

amount or total so payable exceeds the specified amount—the authority must as soon as practicable give written notice to that effect to Comcare.

“(4) Subsections (5) to (8) apply only if:

- 5 (a) the authority has the responsibility for determining the relevant claim; or
- (b) if a determination was made at a time before the licence came into force—the authority would have had the responsibility for determining the relevant claim if the licence had been in force
- 10 at that time.

“(5) Any determination made by Comcare and in force immediately before the day on which the licence comes into force in respect of its liability to pay compensation, or make any other payment, under this Act in respect of an injury, loss or damage suffered by, or in respect of

15 the death of, a relevant employee is taken, on and after that day, to have been made by the authority.

“(6) Any other thing done by Comcare before the day on which the licence comes into force for the purposes of or in connection with the making of a determination in respect of its liability to pay compensation,

20 or make any other payment, under this Act in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee is taken, on and after that day, to have been done by the authority.

“(7) Any notice or claim under Part V in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee,

25 whether the injury, loss, damage or death occurred before or after the licence comes into force, is to be given or made to the authority.

“(8) Any notice or claim given or made to Comcare under Part V and in force immediately before the day on which the licence comes into force, being a notice or claim in respect of an injury, loss or

30 damage suffered by, or in respect of the death of, a relevant employee, continues to have effect, on and after that day, as if it had been given or made to the authority.

“(9) Any proceedings (including proceedings under Part VI) to which Comcare was a party, being proceedings relating to a determination

35 that is taken by subsection (5) to have been made by the authority, in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee that had been brought but not completed before the day on which the licence comes into force, may be continued on and after that day and, if the proceedings are so continued:

- 40 (a) the authority replaces Comcare as a party to the proceedings; but
- (b) Comcare is entitled to become a party to the proceedings.

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

“(10) Any proceedings (including proceedings under Part VI) that may be brought in relation to a determination by the authority in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee, whether the injury, loss, damage or death occurred before or after the licence comes into force, are to be brought against the authority but, if proceedings are so brought: 5

- (a) the authority must tell Comcare as soon as practicable that the proceedings have been brought; and
- (b) Comcare is entitled to become a party to the proceedings.

“(11) Comcare becomes a party to the proceedings by filing a notice in the registry of the court or tribunal concerned stating that it wishes to become a party. 10

“(12) Comcare must serve a copy of the notice on the authority and on the other party, or each other party, to the proceedings.

“(13) A decision in any proceedings referred to in subsection (9) or (10) is binding on the authority and on Comcare, whether or not Comcare becomes a party to the proceedings. 15

Effect of grant of Class 3 Licence

“107M.(1) If a Commonwealth authority is granted a Class 3 Licence, the following provisions have effect in respect of employees of the authority to whom the licence relates (**“relevant employees”**). 20

“(2) Subject to subsection (3), the authority is liable to pay compensation, or make any other payments, under this Act in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee after the licence comes into force, and Comcare is not liable to pay that compensation or make those other payments. 25

“(3) If the licence is subject to a condition that the liability of the authority to pay compensation, or make any other payments, under this Act in relation to a claim in respect of an injury, loss or damage suffered by, or in respect of the death of, an employee of the authority is not to exceed a specified amount: 30

- (a) the authority’s liability in respect of such a claim does not exceed that amount; and
- (b) Comcare continues to be liable to pay compensation, or make any other payments, under this Act in respect of such a claim to the extent to which the authority is not liable under paragraph (a) to pay that compensation or make those other payments. 35

“(4) Subject to subsection (5), the authority has the responsibility for determining claims for compensation or for other payments under this Act in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee, whether the injury, loss, damage or death occurred before or after the licence comes into force. 40

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

“(5) If the licence is subject to a condition that the responsibility of the authority for determining claims does not extend to making a determination that would involve the payment of an amount which, or amounts the total of which, exceeds a specified amount:

- 5 (a) the authority’s responsibility for determining claims is limited accordingly; and
 (b) if the authority makes a determination in the expectation that the amount, or the total of the amounts, payable under the determination will not exceed the specified amount but the
10 amount or total so payable exceeds the specified amount—the authority must as soon as practicable give written notice to that effect to Comcare.

“(6) Subsections (7) to (10) apply only if:

- 15 (a) the authority has the responsibility for determining the relevant claim; or
 (b) if a determination was made at a time before the licence came into force—the authority would have had the responsibility for determining the relevant claim if the licence had been in force at that time.

20 “(7) Any determination made by Comcare and in force immediately before the day on which the licence comes into force in respect of its liability to pay compensation, or make any other payment, under this Act in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee is taken, on and after that day, to
25 have been made by the authority.

 “(8) Any other thing done by Comcare before the day on which the licence comes into force for the purposes of or in connection with the making of a determination in respect of its liability to pay compensation, or make any other payment, under this Act in respect of an injury, loss
30 or damage suffered by, or in respect of the death of, a relevant employee is taken, on and after that day, to have been done by the authority.

 “(9) Any notice or claim under Part V in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee, whether the injury, loss, damage or death occurred before or after the
35 licence comes into force, is to be given or made to the authority.

 “(10) Any notice or claim given or made to Comcare under Part V and in force immediately before the day on which the licence comes into force, being a notice or claim in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee,
40 continues to have effect, on and after that day, as if it had been given or made to the authority.

 “(11) Any proceedings (including proceedings under Part VI) to which Comcare was a party, being proceedings relating to a

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

determination that is taken by subsection (7) to have been made by the authority, in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee, that had been brought but not completed before the day on which the licence comes into force, may be continued on and after that day and, if the proceedings are so continued: 5

(a) the authority replaces Comcare as a party to the proceedings; but

(b) Comcare is entitled to become a party to the proceedings.

“(12) Any proceedings (including proceedings under Part VI) that may be brought in relation to a determination by the authority in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee, whether the injury, loss, damage or death occurred before or after the licence comes into force, are to be brought against the authority but, if proceedings are so brought: 10 15

(a) the authority must tell Comcare as soon as practicable that the proceedings have been brought; and

(b) if it appears to Comcare that it may have a liability in respect of the injury, loss, damage or death, it is entitled to become a party to the proceedings. 20

“(13) Comcare becomes a party to the proceedings by filing a notice in the registry of the court or tribunal concerned stating that it wishes to become a party.

“(14) Comcare must serve a copy of the notice on the authority and on the other party, or each other party, to the proceedings. 25

“(15) A decision in any proceedings referred to in subsection (11) or (12) is binding on the authority and on Comcare, whether or not Comcare is made a party to the proceedings.

Functions of licensed authority

“107N.(1) The functions of a Commonwealth authority that holds a Class 1 Licence are: 30

(a) in discharge of its liability under section 107K, to make payments accurately and quickly in accordance with determinations made by Comcare; and

(b) to comply with any conditions to which the licence is subject. 35

“(2) The functions of a Commonwealth authority that holds a Class 2 Licence are:

(a) to make determinations accurately and quickly in relation to claims that it is authorised to determine under this Act; and

(b) to maintain contact with the Commission and with Comcare to the extent necessary to ensure that, as far as practicable, there is no inconsistency in the administrative practices and 40

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

procedures used by Comcare and the authority in the performance of their respective functions; and

(c) to comply with any conditions to which the licence is subject.

5 3 “(3) The functions of a Commonwealth authority that holds a Class
Licence are:

(a) to make determinations accurately and quickly in relation to claims that it is authorised to determine under this Act; and

10 (b) in discharge of its liability under section 107M, to make payments accurately and quickly in accordance with determinations made by it or by Comcare; and

(c) to maintain contact with the Commission and with Comcare to the extent necessary to ensure that, as far as practicable, there is no inconsistency in the administrative practices and procedures used by Comcare and the authority in the performance of their respective functions; and

15 (d) to comply with any conditions to which the licence is subject.

Powers

20 “107P. A licensed authority has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

Manner in which claims are to be determined

“107Q. In performing the function referred to in paragraph 107N(2)(a) or 3(a), a licensed authority:

25 (a) is to be guided by equity, good conscience and the substantial merits of the case, without regard to technicalities; and

(b) is not required to conduct a hearing; and

(c) is not bound by the rules of evidence.

Licence fees

30 “107R.(1) At the date of commencement of a licence, and at each anniversary of that date while the licence is in force, the licensed authority is liable to pay a fee in respect of the holding or continued holding of the licence.

35 “(2) The amount of the fee is the amount notified in writing to the authority by the Commission, being the amount estimated by the Commission to represent:

(a) the costs of the Commission in monitoring during the relevant period the performance by the authority of its obligations under the licence; and

40 (b) so much of the costs of Comcare in giving assistance, and making available services and resources, to the Commission under section 72A during the relevant period as are reasonably

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

attributable to the performance or exercise by the Commission of its functions and powers in relation to the authority.

“(3) For the purposes of subsection (2), the relevant period is:

- (a) in the case of a fee payable at the date of commencement of the licence—the period commencing on that date and ending immediately before the first anniversary of that date; or 5
- (b) in the case of a fee payable at an anniversary of that date—the period commencing on that anniversary and ending immediately before the next anniversary of that date.

“(4) The fee is a debt due to the Commonwealth and payable to Comcare within such period after it is notified to the authority as the Commission determines. 10

Directions by Commission

“107S.(1) The Commission may, by written notice given to the principal officer of a licensed authority, give a direction to the authority with respect to the performance of its functions or the exercise of its powers under this Act, either generally or in respect of a particular matter or a particular class of matters. 15

“(2) Without limiting the generality of subsection (1), if a licensed authority has failed to comply with a condition to which the licence is subject, the power of the Commission under subsection (1) extends to giving a direction to the authority to comply with the condition by doing, or refraining from doing, anything specified in the direction. 20

“(3) A licensed authority must comply with a direction given to it under this section. 25

Delegation by licensed authority

“107T. A licensed authority may, by writing signed by its principal officer, delegate to an officer of, or a person employed by:

- (a) that authority; or
- (b) the Commonwealth; or 30
- (c) any other Commonwealth authority;

all or any of the powers and functions of the licensed authority under this Act.

Information relating to operations of licensed authority

“107U.(1) For the purpose of enabling the Commission to comply with paragraph 89S(2)(c), the principal officer of a licensed authority must, on the written request of the Commission, give to the Commission such information relating to the operations of the authority under this Act as is specified in the request. 35

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

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

5 Suspension or revocation of licence for breach of condition

“107V.(1) If it appears to the Commission that a licensed authority may have failed to comply with a condition to which the licence is subject, the Commission may give written notice to the authority:

- 10 (a) stating that it appears to the Commission that the authority may have failed to comply with the condition; and
- (b) giving particulars of the matters that the Commission considers may constitute such a failure; and
- (c) stating that, if the Commission is satisfied that a failure has occurred, it may:
- 15 (i) in the case of a Class 2 Licence or Class 3 Licence—suspend the licence; or
- (ii) in any case—revoke the licence; and
- (d) inviting the authority, within 30 days after receiving the notice, to make written submissions in relation to the matter.

20 “(2) At the end of the period referred to in paragraph (1)(d), if the Commission, after considering any submissions made by the licensed authority, is satisfied that the failure occurred, the Commission may:

- (a) in the case of a Class 2 Licence or Class 3 Licence—suspend the licence for such period as it thinks fit; or
- 25 (b) in any case—revoke the licence.

“(3) If the Commission decides to suspend a licence, the Commission must:

- (a) give written notice to the licensed authority:
- 30 (i) stating that it has suspended the licence; and
- (ii) specifying the date of effect, and the period, of the suspension; and
- (iii) setting out the reasons for the suspension; and
- (b) cause to be published in the *Gazette* a notice:
- 35 (i) stating that it has suspended the licence; and
- (ii) specifying the date of effect, and the period, of the suspension.

“(4) If the Commission decides to revoke a licence under this section, the Commission must:

- (a) give written notice to the licensed authority:
- 40 (i) stating that it has revoked the licence under this section; and

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

- (ii) specifying the date of effect of the revocation; and
- (iii) setting out the reasons for the revocation; and
- (b) cause to be published in the *Gazette* a notice:
 - (i) stating that it has revoked the licence under this section; and
 - (ii) specifying the date of effect of the revocation.

Revocation of licence at request of licensed authority

“107W.(1) The Commission may, at the request of a licensed authority, revoke the licence.

- “(2) If the Commission so revokes a licence, the Commission must:
 - (a) give written notice to the licensed authority:
 - (i) stating that it has revoked the licence pursuant to the request; and
 - (ii) specifying the date of effect of the revocation; and
 - (b) cause to be published in the *Gazette* a notice:
 - (i) stating that it has revoked the licence pursuant to a request by the authority under this section; and
 - (ii) specifying the date of effect of the revocation.

Date of effect of suspension or revocation

“107X. The suspension or revocation of a licence takes effect on such date as the Commission determines, being a date not earlier than the date of publication in the *Gazette* of notice of the suspension or revocation.

Effect of suspension

“107Y.(1) While a Class 2 Licence or Class 3 Licence granted to a Commonwealth authority is suspended, the following provisions have effect in respect of employees of the authority to whom the licence relates.

“(2) Comcare is to act as agent of the authority for the purpose of receiving notices and claims, determining claims, conducting proceedings and performing any other functions that the authority would itself perform if the licence were not suspended and the authority is not entitled to perform those functions except through the agency of Comcare.

“(3) In the case of a Class 3 Licence, any liability of the authority under section 107M is not affected unless Comcare decides, with the consent and subject to the directions (if any) of the Commission, to discharge that liability.

- “(4) The authority must:
 - (a) pay to Comcare such amount as Comcare determines to be the

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

cost of performing functions as the agent of the authority under subsection (2); and

- 5 (b) if Comcare makes any payments in discharge of a liability of the authority in accordance with subsection (3)—reimburse Comcare for the amount of the payment.

Effect of revocation of Class 1 Licence

“107Z.(1) If a Class 1 Licence granted to a Commonwealth authority is revoked, the following provisions have effect in respect of employees of the authority to whom the licence related (**‘relevant employees’**).

- 10 “(2) The authority does not have any liability in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee on or after the day on which the revocation takes effect.

- 15 “(3) Subject to subsection (4), any liability of the authority under section 107K in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee before the day on which the revocation takes effect is not affected.

- 20 “(4) Comcare may, with the consent and subject to the directions (if any) of the Commission, decide to discharge a liability of the authority referred to in subsection (3) but, if it decides to do so, that liability is taken into account in varying the estimated amount of the premium of the authority under section 96H.

- 25 “(5) Any proceedings to which the authority was a party, being proceedings relating to any matter arising under this Act (including proceedings under Part VI) in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee, that had been brought but not completed before the day on which the revocation takes effect, may be continued on and after that day and, if the proceedings are so continued, the authority ceases to be a party to the
30 proceedings.

Effect of revocation of Class 2 Licence

- 35 “107ZA.(1) If a Class 2 Licence granted to a Commonwealth authority is revoked, the following provisions have effect in respect of employees of the authority to whom the licence related (**‘relevant employees’**).

“(2) The authority ceases to have any responsibility for determining claims for compensation or for other payments under this Act in respect of relevant employees.

- 40 “(3) Any determination made by the authority and in force immediately before the day on which the revocation takes effect in respect of Comcare’s liability to pay compensation, or make any other

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

payment, under this Act in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee is taken, on and after that day, to have been made by Comcare.

“(4) Any other thing done by the authority before the day on which the revocation takes effect in respect of Comcare’s liability to pay compensation, or make any other payment, under this Act in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee is taken, on and after that day, to have been done by Comcare. 5

“(5) Any notice or claim given or made to the authority under Part V and in force immediately before the day on which revocation takes effect, being a notice or claim in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee, continues to have effect, on and after that day, as if it had been given or made to Comcare. 10 15

“(6) Any proceedings to which the authority was a party, being proceedings relating to any matter arising under this Act (including proceedings under Part VI) in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee, that had been brought but not completed before the day on which the revocation takes effect, may be continued on and after that day and, if the proceedings are so continued: 20

- (a) the authority ceases to be a party to the proceedings; and
- (b) if Comcare is not a party to the proceedings, it becomes a party by force of this paragraph. 25

Effect of revocation of Class 3 Licence

“107ZB.(1) If a Class 3 Licence granted to a Commonwealth authority is revoked, the following provisions have effect in respect of employees of the authority to whom the licence related (**‘relevant employees’**). 30

“(2) The authority does not have any liability in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee on or after the day on which the revocation takes effect.

“(3) Subject to subsection (4), any liability of the authority under section 107M in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee before the day on which the revocation takes effect is not affected. 35

“(4) Comcare may, with the consent and subject to the directions (if any) of the Commission, decide to discharge a liability of the authority referred to in subsection (3) but, if it decides to do so, that 40

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

liability is taken into account in varying the estimated amount of the premium of the authority under section 96H.

5 “(5) The authority ceases to have any responsibility for determining claims for compensation or for other payments under this Act in respect of relevant employees.

10 “(6) Any determination made by the authority and in force immediately before the day on which the revocation takes effect in respect of its or Comcare’s liability to pay compensation, or make any other payment, under this Act in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee is taken, on and after that day, to have been made by Comcare.

15 “(7) Any other thing done by the authority before the day on which the revocation takes effect in respect of its or Comcare’s liability to pay compensation, or make any other payment, under this Act in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee is taken, on and after that day, to have been done by Comcare.

20 “(8) Any notice or claim given or made to the authority under Part V and in force immediately before the day on which revocation takes effect, being a notice or claim in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee, continues to have effect, on and after that day, as if it had been given or made to Comcare.

25 “(9) Any proceedings to which the authority was a party, being proceedings relating to any matter arising under this Act (including proceedings under Part VI) in respect of an injury, loss or damage suffered by, or in respect of the death of, a relevant employee, that had been brought but not completed before the day on which the revocation takes effect, may be continued on and after that day and, if the proceedings are so continued:

- 30 (a) the authority ceases to be a party to the proceedings; and
(b) if Comcare is not a party to the proceedings, it becomes a party by force of this paragraph.

Records

35 “107ZC. The Commission must:

- (a) keep records of the following:
- (i) applications made for licences;
 - (ii) refusals of such applications;
 - (iii) licences granted;
 - 40 (iv) conditions to which licences are subject;
 - (v) expiration of licences;
 - (vi) suspension of licences;

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

- (vii) revocation of licences; and
- (b) cause particulars of matters of which records are so required to be kept to be included in the annual report of the Commission's activities for the financial year to which the matters relate that is given to the Minister under section 89S.”

5

Division 3—Transitional provisions relating to the licensing of authorities

Interpretation

26.(1) In this Division:

“administering authority” has the same meaning as in section 4 of the Principal Act as amended by Division 2 of this Part; 10

“notional licence” means a licence that is taken by subsection 28(1) to have been granted to a Commonwealth authority.

(2) Expressions used in this Division have, unless the contrary intention appears, the same meanings as in Part VIIIA of the Principal Act as amended by Division 2 of this Part. 15

Application of Division

27. This Division has effect despite the repeal of Part VIII of the Principal Act and, unless the contrary intention appears in this Division, despite anything in Part VIIIA of the Principal Act as amended by Division 2 of this Part. 20

Administering authorities to have Class 3 Licences

28.(1) Each administering authority is taken, on the commencement of this Division, to have been granted by the Commission a Class 3 Licence under Part VIIIA of the Principal Act as amended by Division 2 of this Part subject to such conditions as the Commission determines. 25

(2) Subject to this section, Part VIIIA of the Principal Act as amended by Division 2 of this Part applies to a notional licence and so applies as if the licence had been granted under that Part.

(3) Any conditions determined under subsection (1) are taken to have been determined under section 107G of the Principal Act as amended by Division 2 of this Part. 30

(4) A notional licence comes into force on the date of commencement of this Division and continues in force for the period of one year beginning on that date. 35

Previous liability

29. Any liability of an administering authority to pay compensation, or make any other payment, under the Principal Act in respect of an injury, loss or damage suffered by, or in respect of the death of, an

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

employee of the authority, being a liability that existed immediately before the commencement of this Division but had not been discharged before that commencement, continues after that commencement.

Previous determinations

- 5 **30.** Any determination made by an administering authority under
the Principal Act and in force immediately before the commencement
of this Division in respect of an injury, loss or damage suffered by, or
in respect of the death of, an employee of the authority is taken, after
that commencement, to have been made by the authority under the
10 Principal Act as amended by Division 2 of this Part.

Previous notices and claims

- 15 **31.** Any notice or claim given or made to an administering authority
under the Principal Act and in force immediately before the
commencement of this Division, being a notice or claim in respect of
an injury, loss or damage suffered by, or in respect of the death of, an
employee of the authority, continues to have effect, after that
commencement, as if it had been given or made to the authority under
the Principal Act as amended by Division 2 of this Part.

Previous acts, payments etc.

- 20 **32.(1)** Anything done by an administering authority in respect of
its liability to pay compensation, or to make any other payments, under
the Principal Act is taken, after the commencement of this Division,
to have been done by the authority in respect of its liability to pay that
compensation or make that payment under the Principal Act as amended
25 by Division 2 of this Part.

- 30 **(2)** A payment made by an administering authority under the
Principal Act before the commencement of this Division, being a
payment made by the authority in respect of its liability for an injury,
loss or damage suffered by, or for the death of, an employee of the
authority, is taken, after that commencement, to have been made by
the authority in respect of its liability to make such a payment for that
injury, loss, damage or death under the Principal Act as amended by
Division 2 of this Part.

- 35 **(3)** A payment referred to in subsection (2) that had effect as a
redemption of a liability of the authority under the Principal Act has
effect after the commencement of this Division as a redemption of the
corresponding liability of the authority under the Principal Act as
amended by Division 2 of this Part.

Pending proceedings

- 40 **33.** Any proceedings to which an administering authority was a
party, being proceedings relating to a matter arising under the Principal
Act (including proceedings under Part VI of that Act) in respect of an

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

injury, loss or damage suffered by, or in respect of the death of, an employee of the authority, that had been brought but not completed before the commencement of this Division, may be continued after that commencement and, subject to Part VIIIA of the Principal Act as amended by Division 2 of this Part, if the proceedings are so continued, the authority continues to be a party to those proceedings. 5

Division 4—Other amendments

Compensation for injuries resulting in incapacity

34. Section 19 of the Principal Act is amended by omitting from paragraph (4)(f) “the Commission’s” and substituting “Comcare’s”. 10

Cancelled determinations not to affect certain payments of compensation

35. Section 32 of the Principal Act is amended by omitting from subsection (1) “the Commission” and substituting “Comcare”.

Confirmation of estimates

36. Section 96FA of the Principal Act is amended by omitting from subsection (3) “paragraph 96D(4)(b)” and substituting “subsection 96F(1)”. 15

Comcare’s liability to be discharged by prescribed Commonwealth authorities in some cases

37. Section 128A of the Principal Act is amended by omitting from subsection (1) “the Commission’s” and substituting “Comcare’s”. 20

**PART 3—AMENDMENTS OF THE INDUSTRIAL RELATIONS
LEGISLATION AMENDMENT ACT 1991**

Principal Act

38. In this Part, “Principal Act” means the *Industrial Relations Legislation Amendment Act 1991*². 25

Costs of proceedings before Administrative Appeals Tribunal

39. Section 8 of the Principal Act is amended by inserting in paragraph (1)(a) “(first occurring)” after “proceedings”.

Disallowable instruments 30

40. Section 14 of the Principal Act is amended by omitting from subsection (1) “‘57(b)’ ” and substituting “‘57(6)’ ”.

**PART 4—AMENDMENTS OF THE INDUSTRIAL RELATIONS
LEGISLATION AMENDMENT ACT (NO. 3) 1991**

Principal Act 35

41. In this Part, “Principal Act” means the *Industrial Relations Legislation Amendment Act (No. 3) 1991*³.

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

Schedule 1

42. Schedule 1 to the Principal Act is amended by omitting from Part 1 "128A(3)".

Schedule 2

5 43.(1) Schedule 2 to the Principal Act is amended by omitting:

"Subsection 40(5):

Omit 'the Commission', substitute 'Comcare'.

Subsection 40(6):

Omit 'the Commission', substitute 'Comcare'."

10 and substituting:

"Subsection 40(5):

(a) Omit 'The Commission', substitute 'Comcare';

(b) Omit 'the Commission', substitute 'Comcare'.

15 Subsection 40(6):

Omit 'The Commission', substitute 'Comcare'."

(2) Schedule 2 to the Principal Act is amended by omitting:

"Subsection 77(3):

Omit 'the Commission', substitute 'Comcare'."

20 and substituting:

"Subsection 77(3):

Omit 'The Commission', substitute 'Comcare'."

**PART 5—AMENDMENTS OF THE OCCUPATIONAL HEALTH
AND SAFETY (COMMONWEALTH EMPLOYMENT) ACT 1991**

25 **Principal Act**

44. In this Part, "Principal Act" means the *Occupational Health and Safety (Commonwealth Employment) Act 1991*⁴.

Interpretation

45. Section 5 of the Principal Act is amended:

30 (a) by adding the following word and paragraph at the end of the definition of "Commonwealth authority" in subsection (1):

"or; (c) a body corporate:

(i) that is incorporated under a law of the Commonwealth or a State or Territory; and

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

- (ii) in which the Commonwealth has a substantial interest; and
 - (iii) that is a body corporate that the Minister, by notice published in the *Gazette*, has declared to be a Commonwealth authority for the purposes of this Act;”; 5
- (b) by inserting “or (c)” in paragraph (b) of the definition of “Government business enterprise” in subsection (1) after “paragraph (b)”;
- (c) by inserting in subsection (1) the following definitions: 10
 - “**‘principal officer’**, in relation to a Commonwealth authority, means:
 - (a) the person who constitutes, or is acting as the person who constitutes, the authority or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which he or she is present; or 15
 - (b) if the affairs of the authority are administered or managed by a board or other group of persons—the person who is entitled to preside at any meeting of that board or other group at which he or she is present; 20
 - ‘substantial interest’**, in relation to a body corporate, means an interest (other than a controlling interest) in the body corporate that enables the person holding the interest to cast, or control the casting of, a number of votes at a general meeting of the body corporate that is equal to or greater than the number of votes which may be cast, or whose casting may be controlled, by any other single person;”. 25

46. After Part 4 of the Principal Act the following Part is inserted:

“PART 4A—RECOVERY OF COST OF ADMINISTERING ACT 30

“Division 1—Charges for services

Power of Commission to enter into arrangements

“67A.(1) The Commission may enter into an arrangement with the Secretary of a Department, or with the principal officer of a Commonwealth authority, under which: 35

- (a) the Commission will provide to the Department or authority specified services related to the performance by the Commission of its functions under this Act; and
- (b) the Department or authority will pay such amount for the provision of those services as is agreed between them. 40

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

“(2) Any amount payable under such an arrangement is a debt due to the Commonwealth and payable to Comcare.

“Division 2—Contributions

Estimates of contributions

5 “67B.(1) The Commission must prepare an estimate of the amount of contribution to the cost of the administration of this Act by the Commission that is to be paid by each Department or Commonwealth authority for each financial year to which this Division applies.

10 “(2) The estimate in relation to a Department or authority for the financial year referred to in subsection (4) may include an amount in respect of the cost of the administration of this Act during the period from the commencement of this Act to the commencement of that financial year.

15 “(3) An estimate is to be in such form as the Commission considers appropriate or, if the Minister has given a direction as to the form in which estimates are to be prepared under this section, in accordance with the direction.

20 “(4) The period starting on the date of commencement of this Part or 1 July 1992, whichever is the later, and ending on 30 June 1993 is taken to be a financial year to which this Division applies.

“(5) The financial year starting on 1 July 1993 and each subsequent financial year are financial years to which this Division applies.

Amount of contribution

25 “67C. In estimating the amount of the contribution of a Department or Commonwealth authority for a financial year, the Commission must have regard to:

- 30 (a) any information given to the Commission under section 96C of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*; and
- 35 (b) the costs likely to be incurred by the Commission, including costs likely to be incurred by Comcare on behalf of the Commission, in the performance or exercise of the functions and powers of the Commission under this Act (other than section 67A) in relation to the Department or authority during the financial year; and
- 40 (c) the premiums (if any) paid or payable by the Department or authority under Division 4A of Part VII of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* for the financial year; and
- (d) the past, and estimated future, incidence and cost of injury or

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

disease suffered by, or accidents to, employees of the Department or authority in their workplace; and

- (e) the money appropriated by the Parliament for the purposes of the performance by the Commission of its functions under this Act.

5

Information to be given to Commission

“67D.(1) The Secretary to a Department, or the principal officer of a Commonwealth authority, must, on written request by the Commission, give to the Commission the information specified in the request, being information needed by the Commission to enable it to prepare an estimate under section 67C in relation to the Department or authority for a financial year.

10

“(2) The information is to be given not later than a date specified in the request, which must be not earlier than 21 days after the request is made.

15

Review by Commission

“67E.(1) When the Commission prepares an estimate under section 67B, the Commission must give a copy of the estimate to the Secretary to the Department, or the principal officer of the Commonwealth authority, to which the estimate relates.

20

“(2) If the Secretary or principal officer objects to the estimate, the Secretary or principal officer may, by written notice of objection given to the Commission within 14 days after receipt of the copy of the estimate, ask the Commission to review the estimate.

“(3) A notice of objection must set out the grounds of the objection.

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“(4) As soon as practicable after receiving a notice of objection, the Commission must:

- (a) review the estimate to which the notice relates; and
(b) give written notice of the result of the review to the Secretary to the Department, or the principal officer of the Commonwealth authority, concerned.

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“(5) After reviewing an estimate the Commission must:

- (a) confirm the estimate; or
(b) vary the estimate in such manner as it thinks fit and confirm the estimate as so varied.

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Review by Minister

“67F.(1) If:

- (a) an estimate in relation to a Department or a Commonwealth authority has been reviewed under section 67E; and
(b) the Secretary to the Department, or the principal officer of the

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Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

authority, objects to the estimate (or the estimate as varied as a result of the review);

5 the Secretary or principal officer may, by written notice of objection given to the Minister within 14 days after the date of the notice mentioned in paragraph 67E(4)(b), ask the Minister to review the estimate, or the estimate as so varied, as the case may be.

“(2) A notice of objection must set out the grounds of the objection.

“(3) On receipt of a notice of objection, the Minister must review the estimate, or the estimate as varied under section 67E.

10 “(4) After completing a review the Minister must:

(a) confirm the estimate that is the subject of the review; or

(b) vary that estimate in such manner as the Minister thinks fit and confirm it as so varied.

Confirmation of estimates

15 “67G.(1) If the Commission is not required to review an estimate under section 67E, the estimate is taken to have been confirmed, and the confirmation is taken to have taken effect, immediately after the end of the period of 14 days mentioned in subsection 67E(2).

20 “(2) If the Commission confirms an estimate (or an estimate as varied by it) under subsection 67E(5), the confirmation does not take effect if the Minister is required under section 67F to review the estimate (or the estimate as so varied).

25 “(3) If the Minister is not required under section 67F to review an estimate (or an estimate as varied by the Commission), the Commission’s confirmation of the estimate (or the estimate as so varied) takes effect immediately after the end of the period of 14 days mentioned in subsection 67F(1).

30 “(4) The Minister’s confirmation of an estimate (or an estimate as varied under section 67E or 67F) takes effect on the date of the confirmation.

Payment of contribution

“67H.(1) If the confirmation of an estimate (or an estimate as varied under section 67E or 67F) in relation to a Department or Commonwealth authority for a financial year takes effect:

35 (a) the Commission must give written notice to the Secretary to the Department, or the principal officer of the authority, accordingly; and

(b) the confirmed amount is the contribution of the Department or authority for that financial year.

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

“(2) The contribution is payable within such period as is specified in the notice referred to in paragraph (1)(a).

Penalty for late payment

“67J.(1) If a contribution is not paid in full within the period referred to in subsection 67H(2), the Department or Commonwealth authority is liable to pay, in addition to the contribution, a penalty equal to the determined percentage of the sum of the unpaid contribution and any unpaid penalty, calculated at the end of each month or part of a month after the end of that period until the contribution is paid in full. 5 10

“(2) The determined percentage is such percentage as the Commission determines with the approval of the Minister but not exceeding:

- (a) 1.5%; or
- (b) if another percentage is prescribed—that other percentage. 15

Recovery of contribution and penalty

“67K. An amount of contribution, or of penalty under section 67J, is a debt due to the Commonwealth and payable to Comcare.”.

PART 6—AMENDMENTS OF THE SUPERANNUATION ACT
1976 20

Principal Act

47. In this Part, “Principal Act” means the *Superannuation Act 1976*’.

Interpretation

48. Section 54D of the Principal Act is amended: 25
- (a) by omitting “an administering” from the definition of “employee” and substituting “a licensed administering”;
 - (b) by omitting “the administering” from the definition of “employee” and substituting “the licensed administering”;
 - (c) by omitting the definition of “administering authority”; 30
 - (d) by inserting the following definition: 35
- “‘licensed administering authority’ means a Commonwealth authority that holds a Class 2 Licence or a Class 3 Licence under Part VIIIA of the *Commonwealth Employees’ Rehabilitation and Compensation Act 1988*”.

Board to seek recommendations

49. Section 54G of the Principal Act is amended:
- (a) by omitting from paragraphs (a) and (b) “an administering” and substituting “a licensed administering”;

Commonwealth Employment (Miscellaneous Amendments)
No. 95, 1992

(b) by omitting from paragraph (a) “the administering” and substituting “the licensed administering”.

Board to decide whether to approve retirement

5 **50.** Section 54H of the Principal Act is amended by omitting from subsection (1) “an administering” and substituting “a licensed administering”.

NOTES

1. No. 75, 1988, as amended. For previous amendments, see Nos. 71, 109 and 135, 1988; No. 68, 1990; Nos. 70 and 122, 1991; and No. 7, 1992.
2. No. 122, 1991.
3. No. 7, 1992.
4. No. 30, 1991, as amended. For previous amendments, see No. 7, 1992.
5. No. 31, 1976, as amended. For previous amendments, see No. 51, 1976; No. 80, 1977; Nos. 17, 134, 169 and 170, 1978; Nos. 52 and 155, 1979; No. 177, 1980; No. 92, 1981; No. 92, 1983; Nos. 63 and 165, 1984; Nos. 80, 93, 151 and 153, 1986; No. 141, 1987; Nos. 38 and 130, 1988; Nos. 71, 97 and 125, 1989; No. 40, 1990; and No. 130, 1991.

[*Minister's second reading speech made in—*
House of Representatives on 30 April 1992
Senate on 27 May 1992]