

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance

Parliamentary Entitlements Act 1990

Parliamentary Injury Compensation Scheme Instrument 2016

INDEX

GENERAL OVERVIEW	5
COMMENCEMENT	7
FINANCIAL IMPACT STATEMENT	8
CONSULTATION AND REGULATORY IMPACT	8
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS	9
DETAILS OF THE PARLIAMENTARY INJURY COMPENSATION SCHEME INSTRUMENT 2016	13
Part 1—Preliminary	13
Section 1 - Name	13
Section 2 – Commencement	13
Section 3 – Authority.....	13
Section 4 – Parliamentary injury compensation scheme	13
Section 5 - Definitions	13
Section 6 – References to members and the Prime Minister’s spouse	14
Section 7 – Family relationships	14
Section 8 – Definition of <i>injury</i>	14
Section 9 – Definition of <i>disease</i>	15
Section 10 – Injury arising out of or in the course of covered activities.....	16
Section 11 – Injuries suffered by covered persons	17
Section 12 – Injuries etc. resulting from medical treatment.....	18
Section 13 – Incapacity for work.....	18
Section 14 – Serious and wilful misconduct.....	18
Section 15 – Normal weekly earnings – members	19
Section 16 – Normal weekly earnings – Prime Minister’s spouse	20
Section 17 – Relevant period – Prime Minister’s spouse	21

Section 18 – Recovery of damages.....	22
Section 19 – Liability of the Commonwealth.....	22
Section 20 – Amounts of compensation	22
Section 21 – Indexation – Consumer Price Index	22
Section 22 – Indexation – Wage Price Index.....	23
Part 2—Compensation.....	24
Division 1 – Injuries, property loss or damage, medical expenses	24
Section 23 - Compensation for injuries	24
Section 24 – Compensation for loss of or damage to property used by covered person.....	24
Section 25 – Compensation for medical and related expenses.....	24
Division 2 – Injuries resulting in death.....	26
Section 26 – Compensation for injuries resulting in death.....	26
Section 27 – Compensation in respect of funeral expenses.....	28
Division 3 – Injuries resulting in incapacity for work.....	28
Section 28 – Compensation for injuries resulting in incapacity – covered current members ...	28
Section 29 – Compensation for injuries resulting in incapacity – covered former members....	31
Section 30 – Compensation for injuries resulting in incapacity – Prime Minister’s spouse	37
Section 31 – Compensation for injuries resulting in incapacity if covered person is in receipt of a superannuation pension	40
Section 32 - Compensation for injuries resulting in incapacity if covered person is in receipt of a lump sum benefit	41
Section 33 - Compensation for injuries resulting in incapacity if covered person is in receipt of a superannuation pension and a lump sum benefit.....	43
Section 34 – Compensation where covered person is maintained in a hospital	45
Section 35 - Compensation for incapacity not payable in certain cases.....	46
Division 4 – Injuries resulting in permanent impairment	46
Section 36 – Compensation for injuries resulting in permanent impairment	46
Section 37 – Interim payment of compensation	47
Section 38 – Payment of compensation.....	47
Section 39 – Compensation for non-economic loss	48
Section 40 – Approved Guide.....	48
Division 5—Other compensation.....	48
Section 41 - Compensation for household services and attendant care services.....	48
Section 42 - Compensation for certain alterations etc.....	50
Division 6—Miscellaneous	50
Section 43 - Redemption of compensation	50

Section 44 - Recurrent payments after payment of lump sum.....	51
Section 45 - Cancelled determinations not to affect certain payments of compensation	52
Section 46 - Reduction of compensation in certain cases.....	52
Part 3—Services, facilities or equipment relating to risks to health or safety	53
Section 47 - Services, facilities or equipment relating to risks to health or safety.....	53
Part 4—Liabilities arising apart from the scheme	53
Section 48 - Interpretation	53
Section 49 - Action for damages not to lie against Commonwealth etc. in certain cases	54
Section 50 - Actions for damages—election by covered person.....	54
Section 51 - Notice of common law claims against third party.....	55
Section 52 - Notice of common law claims against Commonwealth.....	55
Section 53 - Compensation not payable if damages recovered	56
Section 54 - Dependants not claiming compensation.....	57
Section 55 - Common law claims against third parties	57
Section 56 - Payment of damages by persons to the Commonwealth.....	58
Section 57 - Comcare’s rights and obligations in respect of certain action for non-economic loss	59
Part 5—Claims for compensation.....	59
Section 58 - Notice of injury or loss of, or damage to, property used by a covered person.....	59
Section 59 - Claims for compensation.....	60
Section 60 - Survival of claims.....	60
Section 61 - Claims may not be made in certain cases.....	61
Section 62 - Comcare’s power to require medical examination.....	61
Section 63 - Assessment of employment capability	61
Section 64 - Comcare’s power to request the provision of information.....	62
Section 65 - Comcare must supply certain documents on request	62
Part 6—Reconsideration and review of determinations.....	62
Section 66 - Definitions	62
Section 67 - Parties to proceedings.....	63
Section 68 - Making and notification of determinations	63
Section 69 - Reconsideration of determinations.....	64
Section 70 - Reviewable decision to be notified in writing.....	64
Section 71 - Applications to the Administrative Appeals Tribunal.....	64
Section 72 - Modifications of the <i>Administrative Appeals Tribunal Act 1975</i>	65
Section 73 - Evidence in proceedings before Administrative Appeals Tribunal.....	65

Section 74 - Costs of proceedings before Administrative Appeals Tribunal	65
Part 7—Administration	67
Section 75 - Functions	67
Section 76 - Power to obtain information from Commonwealth entities	68
Section 77 - Manner in which claims are to be determined	68
Part 8—Miscellaneous.....	69
Section 78 - Determinations to be in writing.....	69
Section 79 - Money paid to Comcare for benefit of person	69
Section 80 - Provisions applicable on death of beneficiary.....	69
Section 81 - Assignment, set-off or attachment of compensation	69
Section 82 - Recovery of amounts due to the Commonwealth	70
Section 83 - Recovery of overpayments	70
Section 84 - Notice to Comcare of ceasing to be a member etc.	70
Section 85 - Power to obtain information from administrators of superannuation schemes.....	70
Section 86 - Comcare may write off debt.....	71
Section 87 - Comcare may waive debt	71
Section 88 - Compensation where State compensation payable	71
Section 89 - Notice of departure from Australia etc.....	72

GENERAL OVERVIEW

The *Parliamentary Entitlements Act 1990* (the Act) provides members of each House of the Parliament (members) with a range of benefits. Subsection 9A(1) of the Act provides that the Minister may make a legislative instrument to formulate an injury compensation scheme (the Parliamentary injury compensation scheme) that prescribes compensation or other benefits of a work health or safety nature for parliamentarians and the spouse of the Prime Minister. This instrument establishes the scheme, sets out the scheme rules and confers the administration of the scheme on Comcare.

The scheme provides benefits for Senators and members of the House of Representatives, as well as the spouse of the Prime Minister, referred to as ‘covered persons’ in the instrument. The scheme provides compensation benefits that are closely mirrored on those available to Commonwealth public servants under the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act). The scheme also provides for preventative work health and safety services, facilities and equipment that are also available to Commonwealth public servants and people employed under the *Members of Parliament (Staff) Act 1984*. These benefits are not provided under the SRC Act, rather they are provided by employers. However, there is no specific entitlement for parliamentarians and the spouse of the Prime Minister, to preventative work health or safety services facilities and equipment. It is considered appropriate to make provision for these items as part of a holistic approach to addressing their health and safety needs.

The scheme implements the government’s decision to address the lack of compensation available to parliamentarians who are injured while performing duties as parliamentarians. This is based on the recommendations of numerous reviews of parliamentary entitlements, including the Remuneration Tribunal’s 2011 report that noted that *the Tribunal considers that the lack of workers compensation arrangements for parliamentarians is most unsatisfactory. The fact that they are not employees, in the conventional sense, should not, in the Tribunal’s view, militate against suitable arrangements being established for them.*

Coverage is also extended to the spouse of the Prime Minister where he or she is undertaking official duties in connection with the role of the Prime Minister as the head of government, for example, hosting bilateral/multilateral events for the spouses of other heads of government, such as the Group of Twenty, the Commonwealth Heads of Government Meeting and the Asia-Pacific Economic Cooperation. Whilst undertaking this form of unpaid work the spouse of the Prime Minister is not considered an employee, in the conventional sense, however like parliamentarians they are exposed to numerous occupational risks while conducting their duties for which it is appropriate to have a form of workers compensation coverage.

The instrument is organised into Parts that mirror the structure of the SRC Act. Each part is summarised below.

The rules of the scheme have been included in the instrument, rather than the Act, to allow the scheme to keep pace with any changes in the SRC Act. Since this is the first time a scheme of this kind has been established for parliamentarians, such a legislative instrument will also allow flexibility to quickly address any matters that may arise as a consequence of the unique nature of parliamentary employment.

Part 1 sets out the definitions of the main terms used throughout the instrument. These terms assist in understanding the circumstances in which a covered person will be eligible for compensation under the scheme. Generally the definitions are consistent with those used in the SRC Act, as it is intended that to the extent possible these terms should be interpreted consistently with those used in the SRC Act, with some adjustments and additional terms to recognise the unique nature of parliamentary activities and the duties of the spouse of the Prime Minister. Part 1 also provides that coverage is extended to covered persons from 1 January 2016 which means that aspects of the scheme are retrospective in operation. This is discussed further below.

Part 2 provides compensation benefits to covered persons in respect of injuries covered by the scheme. These benefits include compensation for:

- medical treatment
- lost earnings as a consequence of incapacity to work
- permanent impairment
- household and attendant care services
- alteration of place of residence or place of work
- modifications of a vehicle or article used by a covered person
- medical aids or appliances, or the repair or replacement of such aids or appliances
- death benefits, and
- funeral expenses.

Part 3 allows for the provision of work health or safety, services, equipment or facilities to covered persons as a means of eliminating or minimising risks to the health or safety of covered persons in the course of their covered activities. This is a departure from the SRC Act which only provides compensation and other benefits after a workplace injury or accident has occurred. However, preventative work health or safety benefits are currently provided to Commonwealth officers and *Members of Parliament (Staff) Act 1984* employees by the Commonwealth through their respective agencies and the Department of Finance. Given parliamentarians and the spouse of the Prime Minister do not have an employer through which these benefits can be provided, it is appropriate that they be incorporated into the scheme as part of providing a holistic approach to the health and wellbeing of parliamentarians and the spouse of the Prime Minister when engaged in official activities as the spouse of the Prime Minister.

Part 4 creates limitations on certain types of common law actions that covered persons may take against the Commonwealth or other covered persons, consistent with the SRC Act. This ensures that a covered person cannot recover damages from the Commonwealth or another covered person under common law and receive compensation under the scheme. Where a covered person recovers damages from a third party (other than the Commonwealth or another covered person) for an injury covered by the scheme, compensation will not be payable under the scheme. This part also provides a right of subrogation for the Commonwealth to take action against third parties who may be liable for injuries to a covered person, on behalf of the covered person.

Part 4 also contains notification requirements with respect to common law claims, and establishes offences of strict liability for a failure to notify Comcare in relation to common law claims for damages. These offence provisions mirror the existing arrangements under Part IV of the SRC Act and are further discussed in the Statement of Compatibility with Human Rights at Attachment A.

Part 5 sets out the requirements for making and dealing with claims for compensation such as notice requirements, survival or claims, requirements for medical examination and the provision of information or documents.

Part 6 sets out the arrangements for the reconsideration or review of certain determinations under the instrument. This part deals with both internal review mechanisms by Comcare as the administrator and external review by the Administrative Appeals Tribunal. The instrument makes some changes to the application of the *Administrative Appeals Tribunal Act 1975* consistent with the operation of the SRC Act.

Part 7 confers functions and powers on Comcare in respect of the scheme to assist in their administration of the scheme, in addition to the powers and functions conferred on Comcare elsewhere in the instrument and under the SRC Act.

Part 8 contains miscellaneous provisions that mirror arrangements under Part IX of the SRC Act. Part 8 also contains notification requirements with respect to departures from Australia and establishes an offence provision for a failure to notify Comcare. This offence provision mirrors the existing arrangements under Part IX of the SRC Act and is further discussed in the Statement of Compatibility with Human Rights at Attachment A.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to disallowance.

COMMENCEMENT

Section 2 of the instrument provides that it commences on the later of the day after the instrument is registered on the Federal Register of Legislation or, the day Schedule 1 to the *Parliamentary Entitlements Amendment (Injury Compensation Scheme) Act 2016* (the PEA(ICS) Act) commences. The PEA(ICS) Act commences within 6 months of the date of Royal Assent, or any earlier day fixed by Proclamation.

The instrument provides coverage for covered activities occurring on or after 1 January 2016 in accordance with the government's policy to establish an injury compensation scheme that provides benefits from 1 January 2016. This means that the instrument operates retrospectively. However, as per subsection 12(2) of the *Legislation Act 2003*, the parts of the instrument that have retrospective operation do not affect the rights of a person (other than the Commonwealth or an authority of the Commonwealth) to that person's disadvantage, nor does it impose any liability on such a person.

FINANCIAL IMPACT STATEMENT

The scheme was announced as part of the 2015-16 Budget where funding of \$1.4 million over the forward estimates was provided. The split between Comcare and the Department of Finance (Finance) is as follows:

Financial Year	2015-16	2016-17	2017-18	2018-19
Comcare (\$m)	0.3	0.2	0.2	0.2
Finance (\$m)	0.2	0.1	0.1	0.1
Total (\$m)	0.4	0.3	0.3	0.3

CONSULTATION AND REGULATORY IMPACT

In relation to section 17 of the *Legislation Act 2003*, consultation was undertaken between the Department of Finance, the Department of Employment and Comcare.

The Office of Best Practice Regulation (OBPR) has agreed that proposals such as these have no regulatory impact on businesses, individuals or organisations and therefore the regulatory costs are nil. OBPR ID Number: 19957.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

A Statement of Compatibility with Human Rights has been completed in relation to this instrument and assesses that it is compatible with Australia's human rights obligations. A copy of the Statement of Compatibility with Human Rights is at Attachment A.

Authority: Section 9A of the
Parliamentary Entitlements Act 1990

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

PARLIAMENTARY INJURY COMPENSATION SCHEME INSTRUMENT 2016

This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The main purpose of the Parliamentary Injury Compensation Scheme Instrument (the instrument) is to set out the rules of the Parliamentary injury compensation scheme (the scheme) as formulated by the Minister under section 9A of the *Parliamentary Entitlements Act 1990* (PE Act). The instrument ensures that the scheme provides a number of benefits to parliamentarians and the spouse of the Prime Minister, including injury compensation, compensation in respect of medical equipment, and benefits in respect of preventative work health or safety equipment, services or facilities. These measures will allow the Commonwealth to prevent, compensate and address workplace injuries and accidents for parliamentarians and the spouse of the Prime Minister when engaged in official duties as the spouse of the Prime Minister.

The scheme has been designed to address the lack of workers' compensation in parliamentary service which is considered inconsistent with community expectations around providing safe and healthy workplace conditions for employees more broadly. As a consequence the provisions of the instrument closely mirror the compensation and benefits available to Commonwealth employees under the *Safety, Rehabilitation and Compensation Act 1988*.

The spouse of the Prime Minister often undertakes official duties in connection with the role of the Prime Minister as the head of government. This might include hosting bilateral/multilateral events for the spouses of other heads of government including the Group of Twenty, the Commonwealth Heads of Government Meeting and the Asia-Pacific Economic Cooperation. It is therefore considered appropriate that coverage under the scheme also be extended to the spouse of the Prime Minister in respect of these duties.

The instrument confers a number of powers and functions on Comcare as the administrator of the scheme.

Consistent with the SRC Act the instrument also imposes certain conditions of eligibility for compensation and benefits as well as mechanisms to prevent incorrect payment of benefits and mechanisms for the recovery of overpaid or incorrectly paid benefits. These provisions will allow Comcare to administer the scheme efficiently and in a way that maintains the integrity of the scheme.

Human rights implications

Applicable rights and freedoms engaged

The instrument engages a number of the recognised or declared human rights and freedoms which are identified and addressed below.

Right to work and rights at work

Article 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) relates to conditions of work by recognising ‘the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular...[s]afe and healthy working conditions’.

Article 26 of the *Convention on the Rights of Persons with Disability* (CRPD) also provides that State Parties must take effective and appropriate measures to enable persons with disabilities to ‘attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.’ This includes establishing and strengthening rehabilitation services and programmes in a number of specific areas, including employment.

The right to health

Article 12 of the ICESCR provides that everyone has the right ‘to the enjoyment of the highest attainable standard of physical and mental health’ and that steps must be taken by State Parties for ‘the improvement of all aspects of environmental and industrial hygiene’ in addition to the ‘prevention, treatment and control of epidemic, endemic, occupational and other diseases’. This involves facilitating access to medical services and attention in the event of sickness.

The right to social security

Article 9 of the ICESCR provides that everyone has the right ‘to social security, including social insurance.’ Guidance provided by the Committee on Economic, Social and Cultural Rights (the Committee) at paragraph 17 of *General Comment No. 19* provides that:

State Parties should also ensure the protection of workers who are injured in the course of employment or other productive work. The social security system should cover the costs and loss of earnings from the injury or morbid condition and the loss of support for spouses or dependents suffered as a result of the death of a breadwinner. Adequate benefits should be provided in the form of access to health care and cash benefits to ensure income security.

Right to privacy

Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) provides that ‘[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence’. Where a limitation on the right to privacy is provided by law, this does not necessarily mean that the limitation will not be arbitrary.

The right to a fair hearing

Article 14 of the ICCPR provides that ‘everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law’ and that ‘[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law’. The imposition of strict liability offences is said to engage and limit this right, because it removes the requirement to prove fault in order to establish criminal liability.

Effect of the instrument on the rights and freedoms engaged

The main objective of the instrument is to set out the rules of the Parliamentary injury compensation scheme (the scheme), a compensation scheme designed to provide compensation to parliamentarians and the spouse of the Prime Minister where they suffer an injury or disease, or an aggravation of an injury or disease, in a workplace context. The scheme includes workplace health or safety services, equipment and facilities for parliamentarians and the spouse of the Prime Minister as a means of preventing workplace injury and disease. The scheme broadly provides parliamentarians, and the spouse of the Prime Minister, the same benefits currently available to Commonwealth public servants under the SRC Act.

The instrument confers the administration of the scheme on Comcare, whose efficient administration of the scheme is facilitated through appropriate conditions on the eligibility for, and payment of, benefits under the scheme. Additional mechanisms that relate to the requirement to provide evidence and allow for the recovery of overpaid benefits are also considered necessary to maintain the integrity of the scheme.

The enhancement, protection and promotion of rights

Currently parliamentarians and the spouse of the Prime Minister must pursue compensation through statutory or common law remedies where they have suffered an injury or disease as a consequence of activities relating to their respective roles. This is inconsistent with the broader workforce where employees are provided with a level of workers' compensation insurance by their employers.

The scheme provides a number of benefits to prevent and compensate occupational injuries and diseases. The benefits available are equivalent to those currently available under the SRC Act, and include:

- medical treatment (section 25)
- medical aids or appliances, or the repair or replacement of such aids or appliances (sections 24 and 25)
- incapacity payments (sections 28, 29 and 30)
- permanent impairment (sections 36, 37, 38 and 39)
- the payment of household and attendant care services (section 41)
- modifications of a vehicle or article (section 42)
- death benefits (section 26), and
- funeral expenses (section 27).

The scheme also provides preventative workplace health or safety services, facilities and equipment (section 47). This is consistent with the types of preventative work health or safety measures Commonwealth employers provide to their employees. Noting the above, it is considered that the scheme will enhance, protect and promote the rights to social security, health, work and rights at work, for parliamentarians and the spouse of the Prime Minister.

Reasonable, necessary and proportionate limitations on rights

The instrument provides Comcare with powers to:

- compel claimants to produce information or documents with respect to a claim made under the scheme (sections 51, 52, 53, 64, 84 and 89), and
- require that claimants attend medical examinations to assess their work capabilities (section 63).

The instrument also establishes offences of strict liability in relation to notification requirements under the scheme (sections 51, 52, 53 and 89).

Like the SRC Act the scheme requires appropriate mechanisms to maintain the integrity of the scheme. Such mechanisms will allow claims to be processed accurately and efficiently to ensure that Commonwealth funds are used appropriately.

These control mechanisms are mirrored on the arrangements under the SRC Act and therefore, the information gathering powers are limited to matters that relate to the scheme and include powers to compel claimants to produce documents, information and attend medical examinations that are relevant to their claim or ongoing eligibility. The offence provisions established under the scheme, where notification requirements have not been met, provide for maximum penalties of between 5 to 10 penalty units.

Noting the above, while the inclusion of powers in respect of compelling the production of information may affect privacy rights, limiting the power to matters that relate only to the scheme ensures that the discretion is not so wide that it creates arbitrary interference with an individual's right to privacy. Rather these measures are necessary to ensuring amounts paid under the scheme are paid correctly.

Similarly, the inclusion of strict liability offences as part of the scheme may be considered a limitation on the rights established under Article 14 of the ICCPR. However, these limitations on rights are considered reasonable, necessary and proportionate limitations for the purpose of achieving the legitimate objective of providing the scheme with mechanisms that assist in maintaining the integrity of the scheme.

Conclusion

The instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, because it advances the protection of human rights. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Senator the Hon Mathias Cormann
Minister for Finance

DETAILS OF THE PARLIAMENTARY INJURY COMPENSATION SCHEME INSTRUMENT 2016

Part 1—Preliminary

Section 1 - Name

Section 1 provides that the name of the instrument is the Parliamentary Entitlements (Injury Compensation Scheme) Instrument 2016 (the instrument).

Section 2 – Commencement

Section 2 provides for the commencement of the instrument, as set out in the table.

Subsection (1) provides that each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column two has effect according to its terms.

The first item of the table provides that the whole of the instrument commences on the later of:

- the day after the instrument is registered, or
- the day Schedule 1 to the *Parliamentary Entitlements Amendment (Injury Compensation Scheme) Act 2016* (the Act) commences. According to section 2 of the Act, Schedule 1 commences within 6 months of the date of Royal Assent, or a single day to be fixed by Proclamation.

Subsection (2) provides that any information in column 3 of the table is not part of the instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

Section 3 – Authority

Section 3 provides that the instrument is made under the *Parliamentary Entitlements Act 1990* (the PE Act). The relevant section of the PE Act is section 9A.

Section 4 – Parliamentary injury compensation scheme

Section 4 confirms that this instrument sets out the Parliamentary injury compensation scheme (the scheme) as formulated by the Minister for the purposes of section 9A of the Act.

Section 5 - Definitions

This section defines the main terms used throughout the instrument. Because these terms are explanatory in nature further explanation has not been provided here. The more important terms are defined throughout this Attachment where relevant to a particular section (see below).

Section 6 – References to members and the Prime Minister’s spouse

Section 6 is concerned with references to members and the Prime Minister’s spouse for the purposes of the scheme. It clarifies that references to a member or the Prime Minister’s spouse include people who are no longer a member, or the Prime Minister’s spouse (either where they are no longer the Prime Minister’s spouse or their spouse is no longer the Prime Minister). In some cases such persons may continue to be covered under the scheme, including where:

- the person develops an injury (such as a disease) after they have ceased to hold the relevant position, but which is attributable to their previous activities in that position
- the person suffers an injury that is related to another injury (the first injury) for which they had previously made a claim for compensation under the scheme (such as when they are injured attending medical treatment under the scheme for the first injury), or
- where a person continues to be entitled to compensation under the scheme after they cease to hold the relevant position, such as incapacity payments under Division 3 of Part 2.

‘Injury’ and ‘disease’ are defined for the purposes of the scheme in sections 8 and 9, respectively.

Section 7 – Family relationships

Section 7 clarifies certain relationships and the aspects of those relationships for the purposes of the scheme. The subsections are based on various provisions applying under the SRC Act, grouped into one section (see subsections 4(2), 4(4), 4(5), 4(6) and 4(7)). This section clarifies family relationships as follows:

- what relationships include (without limitation) (subsection (1))
- when a person is taken to be wholly or partly dependent on a covered person who is incapacitated as at the date of the covered person’s death (subsection (2))
- that a person who lived with a covered person as their partner or as their child (within the meaning of a prescribed child) as at the date of death, that person is taken to be wholly dependent on the covered person as at that date (subsection (3))
- when a child is born after the covered person’s death, the child is taken to have been wholly dependent on the covered person as at the date of their death, except for subsection 26(5) (relating to weekly compensation to a prescribed child) (subsection (4)), and
- when Comcare is determining whether a child is or was dependent on a covered person, it cannot take into account certain payments under *A New Tax System (Family Assistance) Act 1999* (subsection (5)).

Section 8 – Definition of *injury*

Section 8 defines injury for the purposes of the scheme; the definition of injury includes a disease (as defined below at section 9).

Subsection (1) provides that injury means:

- a disease suffered by a covered person (as defined below at section 9)
- a physical or mental injury connected with the covered person’s covered activities, or
- a physical or mental injury that may not have arisen out of a covered person’s covered activities but was aggravated by their covered activities.

Paragraphs (d) to (h) specify circumstances that are excluded from the definition of injury, being injuries suffered as a result of:

- a loss of, or failure to gain, selection as a candidate for election to the Parliament. This would include failure to gain pre-selection by a political party
- the loss of, or failure to gain, a position as a minister or parliamentary office holder. This would include positions such as a shadow minister or assistant minister or a particular office such as Speaker of the House of Representatives or President of the Senate
- the loss of, or failure to gain a position in a political party. This would include positions such as party leader, or the expulsion from a political party
- the result of an election, which is intended to cover the loss of a parliamentary seat or a change in government, and
- a decision relating to a benefit (including a decision made under this instrument). This is intended to cover decisions made in relation to certain entitlements under the Act for which a minister or their delegate may have discretion, as well as decisions made in relation to compensation under the scheme.

Subsection (2) provides that any activities engaged in before 1 January 2016 will not be included in the assessment of whether an injury or aggravation of an injury arose out of a covered person's covered activities, as this is the date of the commencement of the scheme.

Section 9 – Definition of *disease*

Section 9 defines disease for the purposes of the scheme. Disease is included as an injury under the scheme (see section 8 above).

Subsection (1) defines disease to mean an ailment suffered by a covered person, or an aggravation of an ailment, that was contributed to, to a significant degree, by the covered person's covered activities. Significant degree is defined in section 5 as meaning *substantially more than material* (see section 5).

In proving that a covered person's activities contributed to an ailment, or aggravation of an ailment, to a significant degree, it requires the covered person to establish that his or her covered activities were more than a mere contributing factor in the contraction of the ailment or aggravation of the ailment. The intention of which is to ensure the Commonwealth is not liable to pay compensation for diseases which have little, if any, connection with a person's covered activities.

Subsection (2) provides a list of things that may be taken into account when determining whether a covered person has satisfied subsection (1). This list is not intended to be exhaustive and there is discretion for Comcare to consider other matters in making a determination that a person has suffered a disease that is compensable under the scheme.

Subsection (3) provides that activities engaged in before 1 January 2016 will not be included in the assessment of whether a covered person's covered activities contributed to, to a significant degree, an ailment suffered, or an aggravation of an ailment experienced, by a covered person. This date is the date that the scheme commences, so only activities occurring after this date are covered by the scheme.

Subsection (4) provides a method of determining the point in time that a covered person suffers a disease or the aggravation of a disease for the purposes of calculating benefits under the scheme. Subsection (4) provides that the day a covered person is taken to have suffered a disease or aggravation of a disease is taken to be the earlier of any of the following days:

- the day the covered person first sought medical treatment for the disease or aggravation
- the day that the disease or aggravation resulted in the death of the covered person
- the day that the disease or aggravation first resulted in the covered person's incapacity for work, or
- the day that the disease or aggravation first resulted in the covered person's impairment.

Subsection (5) clarifies how to determine whether the death of a covered person was as a consequence of a disease covered by the scheme. Subsection (5) provides that death will be a result of a disease covered by the scheme where the death of the covered person, but for the disease, would have occurred at a significantly later time.

Subsection (6) clarifies how to determine whether the impairment or incapacity for work of a covered person was a consequence of a disease covered by the scheme. Subsection (6) provides that an impairment or incapacity for work of the covered person will be a consequence of a disease covered by the scheme where, but for the disease, the covered person's impairment or incapacity for work:

- would not have occurred
- would have commenced/occurred at a significantly later time, or
- would have been suffered to a significantly lesser extent.

Section 10 – Injury arising out of or in the course of covered activities

The scheme provides coverage to members and the Prime Minister's spouse when they are undertaking covered activities. Covered activities are defined in section 5 as:

- for a member – activities engaged in by a member as a member, Parliamentary office-holder or Minister, at a time when the member is entitled to a Parliamentary allowance (see the definition of 'Parliamentary activities' in section 5), and
- for the Prime Minister's spouse – the spouse's official activities as the Prime Minister's spouse.

These terms are not further defined under the scheme, due to the wide variety of functions of members and the Prime Minister's spouse, so the terms will be interpreted according to their ordinary meaning. Consistently with the administration of other entitlements, in assessing claims under the scheme Comcare may rely on the certification of the covered person that their injury was sustained in the course of their covered activities.

In addition to the ordinary meaning of covered activities, section 10 provides clarity, for the avoidance of any doubt, on when an injury to covered person will have arisen out of, or occurred in the course of, a covered person's covered activities.

In some cases section 10 also extends the activities that are covered activities in circumstances where a person is conducting activities in connection with the scheme, but may not fall within the broader definition of covered activities. This ensures that members and the Prime Minister's spouse are covered when they are conducting their respective duties, and also where they are performing activities as required under the scheme (e.g. attending medical examinations for the purposes of the scheme). The circumstances defined in this section are not intended to be exhaustive.

Subsection (1) provides that, without limiting the circumstances where an injury to a covered person would have arisen out of, or in the course of, the person's covered activities, the following circumstances are covered as such under the scheme:

- where a covered person suffers injury as a result of an act of violence, that would not have occurred but for their position as a covered person or their activities as a covered person
- where a covered person suffers an injury while at a particular place for the purpose of:
 - obtaining a medical certificate for the purposes of the scheme
 - receiving medical treatment for an injury covered by the scheme
 - undergoing a medical examination, in accordance with a requirement made under the scheme or an assessment of the covered person's capability of returning to work in suitable employment under section 63, or
 - being provided with any work health or safety services, facilities or equipment, as provided under section 47.
- where a covered person was travelling to or from a place for the purpose of:
 - obtaining a medical certificate for the purposes of the scheme
 - receiving medical treatment for an injury covered by the scheme
 - undergoing a medical examination, in accordance with a requirement made under the scheme or an assessment under section 63 of the person's capability of returning to work in suitable employment.
- while travelling for the purpose of covered activities (paragraph (1)(d)). This is a minor departure from the SRC Act which only covers travel in very specific circumstances. Coverage for travel is extended for the purposes of the scheme to adequately address the unique working arrangements of covered persons. For example, the nature of many of the covered activities is that they are not confined to a specific place of work; rather they may be undertaken in a number of places with much of their travel undertaken only for the purposes of performing covered activities. This also matches situations where members may access travel entitlements, so that members are covered by the scheme while travelling under entitlement.

Subsection (2) provides that where a covered person is injured because they voluntarily and unreasonably submitted to an abnormal risk of injury, coverage will not be extended to them for the specific circumstances referred to in subsection (1).

Section 11 – Injuries suffered by covered persons

Section 11 clarifies that reference in the instrument to an injury suffered by a covered person is, unless contrary intention appears, considered a reference to an injury suffered by the covered person for which compensation is payable under the scheme.

Section 12 – Injuries etc. resulting from medical treatment

Section 12 provides that compensation is payable for subsequent injuries that arise out of medical treatment obtained for an injury covered by the scheme.

Paragraph (b) limits compensation to circumstances where it was reasonable for the covered person to have obtained that medical treatment.

Section 13 – Incapacity for work

Section 13 provides for the circumstances in which a covered person will be incapacitated for work for the purposes of the scheme.

Paragraph (a) has regard to the unique nature of parliamentary employment, and provides that where a covered person is a serving member they will be incapacitated for work if they suffer a reduction in a relevant allowance or salary as a consequence of their injury. This might occur, for example, where a covered person is a minister and suffers an injury that prevents them from performing their ministerial duties and they subsequently resign from their position (and give up their ministerial allowance), but remain a serving member of parliament.

Consistent with the SRC Act, paragraph (b) also provides that where a covered person suffers an injury and is unable to engage in any work, or is unable to engage in work at the same level at which the covered person was engaged in immediately before the injury happened, then they will also be considered incapacitated for work for the purposes of the scheme. This paragraph is intended to apply to former members and the spouse of the Prime Minister who may be employed in alternative employment. In the case of former members, they will only be entitled to incapacity payments where they suffered an injury while a serving member covered by the scheme, or when conducting activities as required by the scheme (see section 10).

Section 14 – Serious and wilful misconduct

Under the scheme, members and the Prime Minister's spouse are entitled to compensation for injuries arising out of, or in connection with their covered activities (broadly a member's activities as a member, Parliamentary office-holder or Minister; and a spouse's official activities as the Prime Minister's spouse).

In general, there is an exception to the entitlement to compensation where an injury or damage to the property used by the person is caused by serious and wilful misconduct. This is consistent with the arrangements under the SRC Act, with the intention being that the Commonwealth should not be liable to pay compensation generally for a person's injury where the injury was caused by the actions of the person.

Serious and wilful misconduct is not exhaustively defined in the instrument, as it will depend on the individual circumstance of each case, and will be determined by Comcare when deciding whether the Commonwealth is liable to pay compensation for an injury.

Section 14 provides guidance that for the purposes of the scheme, a covered person will be taken to have engaged in serious and wilful misconduct if they are under the influence of alcohol or a drug. However, subsection (2) specifically excludes a situation where a drug has been prescribed for the covered person by a legally qualified medical practitioner or dentist and was used by the covered person in accordance with the prescription. Section 14 is not exhaustive of the circumstances where a person may be found to have engaged in serious and wilful misconduct, and therefore not entitled to compensation under the scheme. This section is equivalent to subsection 4(13) of the SRC Act.

Section 15 – Normal weekly earnings – members

Section 15 sets out the rules for the calculation of the normal weekly earnings of a member for the purposes of the scheme. A member's normal weekly earnings are the basis for the calculation of amounts of weekly compensation payable to a covered person under sections 28 and 29 (compensation for injuries resulting in incapacity).

Subsection (1) provides that a member's normal weekly earnings are the total amount of relevant allowance or salary which the member is entitled to receive in respect of a week. Paragraph (1)(a) provides that if the member is a serving member, their normal weekly earnings are the total amount of relevant allowance payable immediately before the injury. Paragraph (1)(b) provides that if the member is a former member, their normal weekly earnings are the total amount of relevant allowance or salary payable just prior to them ceasing to be a serving member.

Section 5 defines relevant allowance as including any of the following to which a member is entitled:

- parliamentary base salary within the meaning of Part II the *Remuneration Tribunal Act 1973*
- additional Parliamentary office holder salary within the meaning of Part II of the *Remuneration Tribunal Act 1973*, and
- salary payable under section 66 of the Constitution (ministerial salary).

Example

P is the Chair of the Joint Statutory Committee of Public Accounts and Audit and suffers an injury covered by the scheme while they are a sitting member. At the time of P's injury, the amount of parliamentary base salary, as determined by the Remuneration Tribunal under *Determination 2015/22: Members of Parliament – Base Salary, Additional Salary for Parliamentary Office Holders, and Related Matters*, was \$199,040 per annum.

Under the same determination the additional salary for the Chair of that committee is 16% of parliamentary base salary. Therefore, P's normal weekly earnings are the sum of these annual amounts:

$$199,040 + (199,040 \times 0.16) = 230,886.40$$

worked out on a weekly basis.

Subsections (2) and (3) provide for increases and decreases to normal weekly earnings, depending on whether a person continues to be a member, or has ceased to be a member.

Subsection (2) applies to sitting members, whose normal weekly earnings are increased or reduced in line with any increase or reduction to any relevant allowance or salary that their normal weekly earnings is based on. For example, where a ministerial allowance forms part of an injured member's normal weekly earnings and there is an increase in the ministerial allowance for a serving member, then the injured member's normal weekly earnings will also be increased by the same amount.

Subsection (3) applies to a person who has ceased to be a member, whose normal weekly earnings are indexed annually on 1 July each year in line with the increase prescribed by the regulations in force under subsection 8(9B) of the SRC Act, in accordance with any manner specified by regulation in force for the purposes of subsection 8(9D) of the SRC Act. Currently the regulations prescribe the Wage Price Index, Australia (Total hourly rates of pay – excluding bonuses/all Australia/all industries/all occupations) published by the Australian Bureau of Statistics as the index under subsection 8(9B) of the SRC Act.

The different approaches to the adjustment of normal weekly earnings in subsections (2) and (3) are consistent with the arrangements applying under the SRC Act, which differ depending on whether the person is a current or former Commonwealth employee.

Subsection (4) is equivalent to subsection 8(10) of the SRC Act and allows for the normal weekly earnings of members to be reduced in certain circumstances where there have been changes in an allowance for reasons that are unrelated to their compensable injury. For example, where a member's normal weekly earnings are based on an allowance that is later abolished. This subsection allows for their normal weekly earnings to be reduced by the amount of the abolished allowance. This ensures that a member will not receive higher payments than they would have received but for their incapacity.

Section 16 – Normal weekly earnings – Prime Minister's spouse

Section 16 sets out the rules for the calculation of the normal weekly earnings of a covered person who is the Prime Minister's spouse. The normal weekly earnings of the Prime Minister's spouse are the basis for the calculation of amounts of weekly compensation payable to a covered person under section 30 (compensation for injuries resulting in incapacity – Prime Minister's spouse).

Subsection (1) provides that for the purposes of the scheme, the normal weekly earnings before an injury of the Prime Minister's spouse are the amount calculated under subsection (2) if there is a relevant period, or if there is no relevant period than the amount is nil. The result of this is that if the spouse of the Prime Minister did not have a continuous period of employment while they were the spouse of the Prime Minister, no compensation for incapacity to work will be payable under the scheme (section 30), however other compensation would still be available – see further at section 17 below.

Subsection (2) provides a method of calculating the normal weekly hours of the Prime Minister's spouse with reference to their hours of employment and hourly rate of employment during the relevant period (if any). The relevant period for the Prime Minister's spouse is set out in section 17 (see below).

Subsection (3) provides a formula for an additional amount to the normal weekly earnings calculated in accordance with subsection (2) where the Prime Minister's spouse is required to work overtime in their employment on a regular basis.

Subsection (4) provides that if because of the shortness of the relevant period, the normal weekly earnings calculated under subsection (2) or (3) would not fairly represent the weekly rate at which the Prime Minister's spouse was being paid before the injury, their normal weekly earnings must be calculated in relation to such other period as Comcare considers reasonable for the purpose of arriving at an amount that does fairly represent the weekly rate that the Prime Minister's spouse was being paid.

Subsection (5) provides a method of indexing normal weekly earnings for the spouse of the Prime Minister. Under subsection (5) the normal weekly earnings worked out under subsections (2) to (4) will be increased annually with effect from 1 July each year in line with the increase prescribed by the regulations in force under subsection 8(9B) of the SRC Act, and in accordance with any manner specified by regulation in force for the purposes of subsection 8(9D) of the SRC Act. Currently the regulations prescribe the Wage Price Index, Australia (Total hourly rates of pay – excluding bonuses/all Australia/all industries/all occupations) published by the Australian Bureau of Statics as the index under subsection 8(9B) of the SRC Act. Consistent with section 14 of the *Legislation Act 2003*, the scheme incorporates any instrument prescribing these matters from time to time, as they are disallowable legislative instruments.

Subsection (6) is equivalent to subsection 8(10) of the SRC Act and allows for the normal weekly earnings of the spouse of the Prime Minister to be reduced in certain circumstances where there have been changes in an allowance for reasons that are unrelated to their compensable injury. For example, where a spouse remains in employment and the terms of their employment change such that they are no longer entitled to penalty rates or a recognised allowance, this section allows their normal weekly earnings to be reduced by the amount of the lost allowance. This ensures that the spouse of the Prime Minister does not receive higher payments than they would have received but for their incapacity.

Section 17 – Relevant period – Prime Minister’s spouse

Section 17 defines the relevant period for the purpose of calculating the normal weekly earnings of a covered person who is the Prime Minister’s spouse within the meaning of section 6 (see section 16 above for the calculation of normal weekly earnings). As noted above, the normal weekly earnings of the Prime Minister’s spouse are the basis for the calculation of amounts of weekly compensation payable to a covered person under section 30 (compensation for injuries resulting in incapacity – Prime Minister’s spouse).

Subsection (1) provides that the relevant period is the most recent 2 week period of continuous employment prior to the injury where the covered person was also the spouse of the Prime Minister.

Subsection (2) recognises that where the covered person was not employed for a continuous 2 week period prior to the injury during their spouse’s Prime Ministership, then there is no relevant period. Paragraph 16(1)(b) provides that where there is no relevant period, the normal weekly earnings of the covered person is nil. The calculation of the normal weekly hours in this way is consistent with how compensation for incapacity is calculated under the SRC Act for Commonwealth employees, as it is based on prior service. If no employment has been undertaken by the Prime Minister’s spouse then he or she will not be entitled to incapacity payments under section 30, however will still be entitled to other compensation under the scheme.

Subsection (2) also gives the term Prime Minister’s spouse its ordinary meaning for the purposes of paragraph (1)(b), which is contrary to the definition set out in section 6. This is because the definition in section 6 includes a person who was formerly the spouse of the Prime Minister. For the purposes of calculating the relevant period under this subsection, the 2 week period must also occur during the Prime Ministership of the covered person’s spouse.

Consistent with section 19 of the SRC Act, subsection (3) provides that any part of the relevant period that occurred before the minimum amount per week payable to the covered person in respect of their employment was varied as a result of the operation of a Commonwealth, State or Territory law, or the making, alteration or operation of an award, determination or industrial agreement or the doing of any other act or thing under such a law, must be disregarded in calculating the relevant period.

Subsection (4) provides that subsection (3) does not apply if it would require a period to be disregarded and, as a result of disregarding that period, it would be impracticable to calculate under section 16 the normal weekly earnings of the covered person before the injury; and the calculated normal weekly earnings would not fairly represent the weekly rate at which the covered person was being paid in respect of his or her employment before the injury. In this case, the normal weekly earnings of the covered person during that period are taken to be the amount that would have been his or her weekly earnings during that period if the variation under subsection (3) had taken effect at the beginning of that period.

Subsection (5) provides that if, during the period, the covered person’s earnings were reduced, or they did not receive any earnings, that part of the period must be disregarded for the purposes of calculating the relevant period.

Section 18 – Recovery of damages

Section 18 provides the circumstances in which, for the purposes of the scheme, damages are taken to have been recovered by a covered person, or by, or for the benefit of, a dependant of a deceased covered person. Where damages are recovered for an injury covered by the scheme, the claimant may be required to pay amounts to the Commonwealth where they have also received compensation under the scheme, to ensure that a person may not be compensated by the Commonwealth where they have received damages from another source. See Part 4 below.

Section 19 – Liability of the Commonwealth

Section 19 clarifies the extent of the Commonwealth's liability to pay compensation, under the scheme, providing that it is to the amount determined to be payable by Comcare.

Section 20 – Amounts of compensation

Section 20 clarifies that unless a contrary intention appears, amounts of compensation payable under a specific provision of the instrument are in addition to an amount of compensation payable under another provision of the instrument. The scheme includes a number of different categories of compensation, including:

- costs relating to loss of, or damage to, property used by the covered person
- costs of medical treatment
- death benefits
- funeral expenses
- compensation for incapacity to work
- compensation for permanent impairment
- payment of household and attendant care services, and
- alterations, modifications (e.g. to residence or vehicle) and medical aids.

This section makes it clear that a person may be entitled to more than one type of compensation under the scheme in respect of the same injury.

Section 21 – Indexation – Consumer Price Index

Section 21 provides for the annual indexation of certain benefits payable under the scheme in line with the All Groups Consumer Price Index (CPI) as published by the Australian Statistician (the head of the Australian Bureau of Statistics).

The benefits that are indexed by this section are:

- subsection 27(2) (funeral expenses)
- subsection 29(13), (14) or (15) (incapacity payments – covered former members)
- subsection 30(12), (13) or (14) (incapacity payments – Prime Minister's spouse)
- subsection 36(10) (payments for injuries resulting in permanent impairment)
- subsection 39(2) (payments in respect of compensation for non-economic loss)
- subsection 41(1) or (3) (payments in respect of household and attendant services), and
- subsection 43(1) (redemption of compensation).

Subsection (1) provides for the definitions of ‘index number, ‘relevant amount’ and ‘relevant year’ for the purposes of section 13. ‘Index number’ means the CPI number as published by the Australian Statistician in respect of that quarter. The ‘relevant amount’ means the amounts referred to above.

‘Relevant year’ means the financial year starting on 1 July 2016 (it being the start of the first financial year following commencement of the scheme) or a later year.

Subsection (2) provides for an increase to the amounts specified in subsections 26(3), (4) and (5), annually by the indexation factor.

Subsections (3) – (6) set out the method for calculating the indexation factor, including dealing with decimal places and specifying the index number to be used.

The indexation arrangements under the scheme are equivalent to those applying under sections 13 and 13AA of the SRC Act, so that benefits under this scheme will be the same as under the SRC Act.

Section 22 – Indexation – Wage Price Index

Section 22 provides that where an injury which results in the death of an employee, the amounts of compensation that are payable to dependants under subsections 26(3), (4) and (5) of the instrument are indexed annually on 1 July. The method of indexation is calculated with reference to the Wage Price Index (WPI) as published by the Australian Statistician (the head of the Australian Bureau of Statistics).

The WPI uses total hourly rates of pay, excluding bonuses, to measure changes in employee wages paid by business in Australia. It is an appropriate index because the benefits provide compensation having regard to losses suffered by dependants as a result of the cessation of the covered person’s earnings.

Subsection (1) provides for the definitions of ‘index number, ‘relevant amount’ and ‘relevant year’ for the purposes of section 13AA. ‘Index number’ means the WPI number as published by the Australian Statistician in respect of that quarter. The ‘relevant amount’ means the amounts referred to in the death benefits provisions under subsections 26(3), (4) and (5) which relate to lump sum and weekly compensation payable to dependants and prescribed children as the case may be. ‘Relevant year’ means the financial year starting on 1 July 2016 (it being the start of the first financial year following commencement of the scheme) or a later year.

Subsection (2) provides for an increase to the amounts specified in subsections 26(3), (4) and (5), annually by the indexation factor.

Subsections (3) – (6) set out the method for calculating the indexation factor, including dealing with decimal places and specifying the index number to be used.

The indexation arrangements under the scheme are equivalent to those applying under sections 13 and 13AA of the SRC Act, so that benefits under this scheme will be the same as under the SRC Act.

Part 2—Compensation

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

Section 23 - Compensation for injuries

Section 23 sets out the general rule for when the Commonwealth is liable to pay compensation in respect of an injury covered by the scheme. Under the scheme, compensation is payable for an injury suffered by a covered person if the injury results in the death, incapacity for work, or impairment of the covered person, subject to the exclusions in subsections (2) and (3) and other criteria in the instrument for the qualification for individual types of compensation. Subsections (2) and (3) provide the following general circumstances where compensation will not be payable:

- where the injury is intentionally self-inflicted (subsection (2)), or
- where the injury was caused by the serious and wilful misconduct (see section 14 above) of the covered person that is not intentionally self-inflicted, unless the injury results in death, or serious and permanent impairment.

These exclusions are equivalent to those that apply under section 14 of the SRC Act.

Section 24 – Compensation for loss of or damage to property used by covered person

Section 24 provides for compensation to be payable by the Commonwealth where an accident occurs that does not cause injury to the covered person, but causes the loss of, or damage to, property used by the covered person.

Property used by the covered person is defined in section 5 to mean an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by the covered person.

Subsection (1) provides that where a covered person suffers loss or damage to property used by the covered person as a consequence of their covered activities, compensation is payable in respect of the reasonable expenditure incurred in the repair or replacement of that property. Subsection (1) also provides that the incident that caused the loss or damage need not have resulted in an injury to the covered person for compensation to be payable under this section (where a person suffers an injury that requires a medical aid or appliance, compensation for this is provided for separately under the scheme, see section 25).

Subsection (2) describes reasonable expenditure as including fees or charges paid by the covered person to a medical practitioner or dentist.

Subsection (3) provides that compensation is not payable under this section if the loss or damage is attributable to the serious and wilful misconduct of the covered person (see section 14 above).

Subsection (4) provides that covered activities engaged in before 1 January 2016 are disregarded for the purposes of this section, as this is the date that coverage under the scheme commenced under the instrument.

Section 25 – Compensation for medical and related expenses

Section 25 provides that the Commonwealth is liable to pay compensation for the cost of medical treatment. The amount of compensation is determined by Comcare and is only payable so long as it was reasonable for the person to obtain the medical treatment in the circumstances (subsection (1)).

Medical treatment is defined in section 5 of the instrument as having the same meaning as in the SRC Act, with a reference to an employee in that definition being taken to be a reference to a covered person. Subsection 4(1) of the SRC Act currently defines medical treatment meaning:

- (a) medical or surgical treatment by, or under the supervision of, a legally qualified medical practitioner; or*
- (b) therapeutic treatment obtained at the direction of a legally qualified medical practitioner; or*
- (c) dental treatment by, or under the supervision of, a legally qualified dentist; or*
- (d) therapeutic treatment by, or under the supervision of, a physiotherapist, osteopath, masseur or chiropractor registered under the law of a State or Territory providing for the registration of physiotherapists, osteopaths, masseurs or chiropractors, as the case may be; or*
- (e) an examination, test or analysis carried out on, or in relation to, [a covered person] at the request or direction of a legally qualified medical practitioner or dentist and the provision of a report in respect of such an examination, test or analysis; or*
- (f) the supply, replacement or repair of an artificial limb or other artificial substitute or of a medical, surgical or other similar aid or appliance; or*
- (g) treatment and maintenance as a patient at a hospital; or*
- (h) nursing care, and the provision of medicines, medical and surgical supplies and curative apparatus, whether in a hospital or otherwise; or*
- (i) any other form of treatment that is prescribed for the purposes of this definition.*

In addition, the *Safety, Rehabilitation and Compensation Regulations 2002* currently prescribe therapeutic treatment by, or under the supervision of:

- (a) an occupational therapist;*
- (b) an optometrist;*
- (c) a podiatrist;*
- (d) a psychologist;*
- (e) a speech therapist,*

as medical treatment for the purposes of the SRC Act, provided that the person is registered under the law of a State or Territory providing for the registration of persons of that kind; or, if there is no such law, a member of a relevant professional association.

Subsection (2) provides that compensation is payable for medical treatment even where the injury results in death, incapacity for work, or impairment (for which compensation benefits may also be payable under other sections, including 26, 28, 29, 30, 36 and 39).

Subsection (3) provides that the cost of medical treatment in respect of the supply, replacement or repair of property used by a covered person is also taken to include fees or charges paid or payable by the covered person to a legally qualified medical practitioner, a legally qualified dentist or other qualified person, connected with the supply, replacement or repair of the property.

Subsection (4) allows for compensation under this section to be paid:

- to or in accordance with the directions of the covered person
- if the covered person has died, to another person who has borne the cost (but not the covered person's legal personal representative), for example the covered person's family member, or
- to a person to whom the cost is payable, for example the person who provided the medical treatment.

This subsection gives Comcare the flexibility, for example, to pay the provider of medical treatment directly on behalf of the covered person, and subsection (5) makes it clear that such a payment discharges the liability of the person who is liable to pay the cost to the provider.

Under subsection (6), a covered person is also entitled to compensation for the cost of a journey to obtain medical treatment (calculated using the formula in subsection (7)), or for remaining for the purpose of obtaining medical treatment at a place to which the covered person has made a journey for that purpose. This applies where the covered person has incurred expenditure for the travel, and would not apply, for example, where the travel has been provided by the Commonwealth under a travel entitlement.

Subsection (8) provides that compensation for travel is not payable unless the journey exceeded 50 kilometres (return) or if by public transport or ambulance the person's injury reasonably required the use of such transport regardless of the distance travelled.

Subsection (9) sets out the matters that Comcare must take into account in determining the compensation payable under subsection (6) are:

- the place or places where appropriate medical treatment was available to the covered person
- the means of transport available to the covered person for the journey
- the route or routes by which the covered person could have travelled, and
- the accommodation available to the covered person.

Subsection (10) covers cases where costs are incurred for the transportation of a person (or the body of a person that has died) from the place where an injury covered by the scheme was sustained, to a hospital or other similar place, or a mortuary (as relevant). The subsection provides that the Commonwealth is liable to pay compensation to the person who incurred the expenditure for the transportation of the person or the person's body.

Division 2 – Injuries resulting in death

Section 26 – Compensation for injuries resulting in death

Section 26 provides for compensation to be paid to dependants of a covered person where an injury results in the death of the covered person. The amounts of compensation under this section are indexed in line with the Wage Price Index under section 22 and reflect the amounts available under the SRC Act including any indexation available under section 13AA of the SRC Act from 1988. The current rates payable under the SRC Act are available at:

http://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/rates_and_reimbursements/statutory_rates

Subsection (2) provides that compensation for an injury resulting in death is not compensable under the scheme where a covered person dies without leaving dependants. However compensation may still be payable in accordance with sections 25 (medical expenses) and 27 (funeral expenses).

Subsection (3) provides that where a covered person dies leaving dependants who were wholly dependent on the covered person as at their date of death, then an amount of \$517,564.84, is payable to the dependants (or may be paid to Comcare to hold on their behalf).

Subsection (4) provides that where a covered person dies and leaves dependants who were partly dependent on the covered person as at their date of death, Comcare has the discretion to pay up to a maximum of \$517,564.84. In determining the amount payable Comcare will have regard to any losses suffered by those dependants as a result of the cessation of the covered person's earnings.

Subsection (5) provides for an amount of weekly compensation to be payable where a covered person dies leaving a prescribed child who:

- was wholly or mainly dependent on the covered person
- was a child of the covered person who was born after the covered person's death, or
- would have, but for the covered person's death, been wholly or mainly dependent on the covered person.

The amount of weekly compensation payable is \$142.33. Weekly compensation is payable from the date of the covered person's death or the date of the prescribed child's birth.

A prescribed child is defined in section 5 of the instrument, to mean:

- a person under 16, or
- between the ages of 16 and 25 who is receiving a full-time education at a school, college, or university or other educational institution; and is not ordinarily in employment or engaged in work on his or her own account.

Subsection (6) provides that compensation is not payable for any period where a child does not meet the definition of a prescribed child or for a child referred to in paragraph (5)(c) (a prescribed child that would, if the covered person had not died, have been wholly or mainly dependent on the covered person) during any period which, if the covered person had not died, the child would not have been wholly or mainly dependent on the covered person.

Subsection (7) provides that where the Commonwealth is liable to pay compensation under the scheme prior to the death of the covered person, any amounts of compensation so paid or payable must not be deducted from the compensation payable under subsection (3) (compensation to dependants wholly dependent on the covered person) and cannot be taken into account for the purposes of determining the amount of compensation payable under subsection (4) (payments to dependants partly dependent on the covered person). Conversely, subsection (7) also provides that where subsection (2) applies (covered person who dies without leaving dependants, and therefore no compensation is payable under this section), this does not affect any other entitlement to compensation under the scheme (such as compensation for medical and related expenses under section 25, or payment of funeral expenses under section 27).

Subsection (8) provides that, in cases where compensation is payable under this section for the benefit of two or more dependants, Comcare will determine the portion of the compensation payable to each dependant, having regard to any losses suffered as a result of the cessation of the covered person's earnings. The sum of the amounts paid to each dependant must not exceed the total amount of compensation payable under this section.

Subsection (9) provides that reference to a dependant of a deceased covered person is also a reference to a dependant by or on behalf of whom a claim is made for compensation under this section.

Subsection (10) provides that Comcare must treat the claims of more than one dependant under this section as one claim, by making one determination of the compensation payable in respect of those claims.

Section 27 – Compensation in respect of funeral expenses

Section 27 prescribes benefits in respect of funeral expenses where an injury covered by the scheme results in a covered person's death. The amount of compensation payable will be the amount that Comcare considers reasonable having regard to the matters listed in subsection 18(2) and not exceeding \$11,459.25 (as indexed annually in line with CPI under section 21).

The amount specified in the instrument is the current amount available under section 18 of the SRC Act (\$9,000, as indexed in line with CPI since 1988 under section 13 of the SRC Act). The current rates payable under the SRC Act are available at:

http://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/rates_and_reimbursements/statutory_rates

Compensation under this section may be paid to one of the following:

- the person who paid the cost of the covered person's funeral, or
- the person who carried out the funeral.

Payment of compensation by the Commonwealth under this section is a discharge of the liability of the person who would otherwise be liable to pay the cost of the funeral (see subsection (3)).

Division 3 – Injuries resulting in incapacity for work

Section 28 – Compensation for injuries resulting in incapacity – covered current members

Section 28 sets out the method for determining incapacity payments for a covered person who is also a current member (covered current member) and is incapacitated as a consequence of an injury.

Incapacity in relation to a covered current member is defined in section 13 to mean an incapacity that results in a reduction in a relevant allowance or salary in relation to the member. Relevant allowance or salary is defined in section 5 as any of the following to which the member is entitled:

- parliamentary base salary within the meaning of Part II of the *Remuneration Tribunal Act 1973*
- additional Parliamentary office holder salary within the meaning of Part II of the *Remuneration Tribunal Act 1973*, and
- salary payable under section 66 of the Constitution.

Subsection (2) provides that the amount of weekly compensation payable to the covered person is their normal weekly earnings, less any relevant allowance or salary to which the covered person remains entitled. In all cases, a covered person who continues to serve as a parliamentarian will be entitled to their parliamentary base salary and this section has the effect of offsetting the amount of compensation the covered person is entitled to receive against any salary they continue to receive as a serving parliamentarian.

The normal weekly earnings of a covered person who is a member is defined in section 15 to mean any relevant allowance or salary that the member was entitled to before the injury, plus any increases the member is entitled to in accordance with section 15.

The incapacity payments calculated under subsection (2) have the effect of supplementing a covered person's weekly income so that they receive total payments of 100% of the relevant allowance or salary that they would have received but for their injury. However, consistent with section 19 of the SRC Act, there is a limit on the period of time that a covered person is entitled to be compensated for the full amount of their reduction in relevant allowance or salary as a result of their injury (their normal weekly earnings). A week where a covered person is entitled to be paid compensation up to 100% of their normal weekly earnings is known as a maximum rate compensation week.

Subsection (4) provides that a member is entitled to receive incapacity payments under subsection (2) for so long as the total of the payments received does not exceed 45 times the member's normal weekly earnings.

Example

Minister L is a Cabinet Minister and her normal weekly earnings are \$6,698, comprising \$3,828 in base salary and \$2,870 in ministerial allowance.

Minister L suffers a compensable injury and resigns from her ministerial position as a consequence of the injury, but remains a serving member.

Minister L is incapacitated for work as she has suffered a loss of a relevant allowance of \$2,870 per week as a consequence of her injury.

Minister L is entitled to receive compensation payments to supplement the reduction in her relevant allowance or salary, up to 100% of her normal weekly earnings prior to the injury, until the total of her incapacity payments equals 45 times her normal weekly earnings. This is calculated as follows:

$$45 \times 6,698 = 301,410$$

Therefore, Minister L will receive weekly compensation payments for incapacity for 105.02 weeks (i.e. \$301,410 divided by \$2,870, assuming she continues to be incapacitated for that period and that there is no change to her normal weekly earnings in that period under section 15).

Where the total of a covered person's incapacity payments received is equal to 45 times their normal weekly earnings, their weekly incapacity payments going forward will be based on a reduced rate compensation week. When a covered person is in a reduced rate compensation week the amount of weekly compensation they are entitled to receive under subsection (2) may be reduced in line with subsections (7) and (8).

Subsection (7) provides that where a covered person is entitled to a pension under a superannuation scheme as a consequence of their incapacity then their incapacity payments are reduced by the amount of the pension payable.

Subsection (8) provides that where the weekly compensation payments for the incapacity of a covered person will exceed 150% of the Average Weekly Ordinary Time Earnings of Full-time Adults (AWOTEFA), as published by the Australian Statistician (\$2,248.95 as at 25 February 2016), then the amount of their weekly incapacity payments must be reduced by an amount equal to the excess.

These reduction provisions are consistent with those applying under section 19 of the SRC Act, however, additional ones that are not relevant to the circumstances of sitting members have been omitted. These are included for former members and the Prime Minister's spouse under sections 29 and 30.

In some circumstances, the total of the covered person's incapacity payments received may equal 45 times their normal weekly earnings in the middle of a week. In these circumstances the reduction is apportioned for the part of the week that is a maximum compensation week and the other part of the week that is a reduced rate compensation week. The formula in subsection (6) is used to calculate the reduction and is expressed below in the example.

Example

M was a Shadow Minister who was incapacitated for work and gave up his shadow ministerial allowance as a consequence, but remained a serving member. M is receiving incapacity payments under section 28 in respect of the lost allowance of \$497.60 a week. He is also in receipt of a superannuation pension of \$600 a week in respect of his incapacity.

M's normal weekly earnings were calculated at \$4,325 and he has been receiving incapacity payments of \$497.60 for 391 weeks, this means that Minister M's incapacity payments to date total \$194,561.60.

M is due to exceed 45 times his normal weekly earnings (\$194,625) by \$434.20 in his 392nd week of incapacity payments.

The following formula in subsection (6) is used to calculate the reduced rate of compensation for the first week that is part a maximum rate compensation week and part a reduced rate compensation week:

$$\text{Total reductions} \times \frac{\text{Excess amount}}{\text{Maximum rate compensation amount}}$$

Where:

'Total reductions' is the amount Minister M's incapacity payments must be reduced by as a consequence of his superannuation pension: \$600.

'Excess amount' is the amount that exceeds 45 times Minister M's normal weekly earnings: \$434.20.

'Maximum rate compensation amount' is the amount of Minister M's incapacity payments if it was a maximum rate compensation week: \$497.60.

The formula is applied as follows:

$$600 \times (434.20/497.60) = 523.55$$

Therefore, for the first week that is a part reduced rate compensation week M's incapacity payments would be reduced by \$523.55, and \$600 in successive weeks.

Subsection (9) provides that where a covered person ceases to be a covered current member and becomes a former member, for the purposes of calculating their compensation they are treated as a covered current member for the whole week and are treated as being entitled to the amount of relevant allowance or salary to which they would have been entitled had they not ceased to be a covered current member. This is relevant to the calculation of incapacity payments for former members in section 29 below.

Section 29 – Compensation for injuries resulting in incapacity – covered former members

Section 29 provides a method for determining incapacity payments for a covered person who is a former member and who is incapacitated as a consequence of an injury covered by the scheme.

Incapacity in relation to former members is defined in section 13 to mean:

- an incapacity to engage in any work, or
- an incapacity to engage in work at the same level at which the covered person was engaged immediately before the injury happened.

Subsection (2) provides that the amount of weekly compensation payable to the covered person is their normal weekly earnings, less the greater of either of the following:

- the amount per week (if any) that the covered person is able to earn in suitable employment (determined with reference to subsection (10) referred to below), or
- the amount per week (if any) that the covered person earns from any employment (including self employment) for the relevant week.

The normal weekly earnings of a member under section 15, for a person who is a former member, is the total amount of relevant allowance or salary payable just prior to them ceasing to be a serving member. Relevant allowance and salary, as defined in section 5, includes any of the following to which the covered person was entitled:

- parliamentary base salary within the meaning of Part II of the *Remuneration Tribunal Act 1973*
- additional Parliamentary office holder salary within the meaning of Part II of the *Remuneration Tribunal Act 1973*, and
- salary payable under section 66 of the Constitution.

The incapacity payments calculated under subsection (2) have the effect of supplementing a covered person's weekly income so that they receive total payments of 100% of the relevant allowance or salary that they would have received but for their injury. However, consistent with section 19 of the SRC Act, there is a limit on the period of time that a covered person is entitled to be compensated for the full amount of their reduction in relevant allowance or salary as a result of their injury (their normal weekly earnings). A week where a covered person is entitled to be paid compensation up to 100% of their normal weekly earnings is known as a maximum rate compensation week.

Subsection (3) provides that a covered person is only entitled to receive incapacity payments under subsection (2) for the first 45 weeks of incapacity. Each week is measured in hours, such that if a covered person was able to work half of their normal weekly hours for a week, their 45 weeks worth of incapacity payments at their normal weekly earnings would be paid over 90 weeks, or 45 times the person's normal weekly hours.

Subsection (3) also provides a formula for converting the amount of compensation payments received by a member who was incapacitated while a current covered member and later became a former member, to determine the hours they have received maximum compensation for before ceasing to be a member. The formula for this calculation is set out in subsection (4).

Under subsection (4), the amount of hours a former member has received incapacity payments for is worked out by dividing the total of the compensation paid under section 28 by the covered person's notional hourly rate, which is based on the relevant allowance or salary the person was entitled to for a week when they were a member, divided by 37.5.

Example

W was the Leader of a Minority Party and ceased to be Leader (and therefore ceased to be entitled to an allowance as Leader) as a consequence of an injury for which he was incapacitated for work. W continued to serve as a member for another 5 weeks in receipt of incapacity payments for the lost allowance.

W later ceased to be a member as a consequence of his injury and continued to be incapacitated for any work. The total of the incapacity payments W had received under section 28 at the time of his cessation was \$8,612.30. W is entitled to receive incapacity payments of \$5,550.15 per week (100% of his normal weekly earnings) upon cessation for a maximum compensation week where he remains incapacitated for any work.

W is entitled to receive incapacity payments for 45 x his normal weekly hours (of 37.5) which amounts to 1,687.5 hours of incapacity payments at the maximum rate of 100% of his normal weekly hours.

The formula in subsection (4) is used to determine the value of the incapacity payments Minister W received while a serving member in hours:

$$\frac{\text{Section 28 compensation}}{\text{Notional hourly rate}}$$

Where:

'Section 28 compensation' is the total amount of compensation paid under section 28: \$8,612.30.

'Notional hourly rate' is deemed in respect of members to be: 37.5 hours.

The formula is applied as follows:

$$8,612.30/37.5 = 229.66$$

Therefore, W has been paid for 229.66 of the 1687.5 hours of incapacity for which he is entitled to maximum rate compensation under section 29.

Where the total of a covered person's incapacity payments received is equal to 45 times their normal weekly hours, their weekly incapacity payments going forward will be based on a reduced rate compensation week. When a covered person is in a reduced rate compensation week the amount of weekly compensation they are entitled to is reduced from that under subsection (2). However, where a covered person is able to undertake some work they will become entitled to a progressively higher rate of incapacity payments in order to encourage a gradual return to fulltime employment when medically fit to do so.

Subsection (5) provides a method of calculating the amount of the incapacity payment payable for a week in which the period of the maximum rate incapacity payments will exceed 45 times their normal weekly hours during a week. Subsection (5) provides that the formula under subsection (6) applies for the part of the week that is a maximum rate compensation week; and the formula in subsection (8) applies in respect of the remainder of the week, in accordance with subsection (7).

Subsection (8) provides for an adjustment of the rate of compensation a covered person is entitled to receive under this section based on the number of hours they spend in employment, any income that they earn from employment, and any income they could earn from suitable employment. The effect of this section is that, for a week that is a reduced rate compensation week a person will receive 75% of their normal weekly earnings (less any amounts they receive or could receive from suitable employment) if they are not engaging in any employment. However, this percentage increases if the covered person is employed for part or all of their normal weekly hours. For example, if a covered person was to work more than 75% but less than 100% of their normal weekly hours during that week, their incapacity payments would be calculated at 95% of their normal weekly earnings (less any amounts they receive or could receive from suitable employment). This is designed to create a financial incentive to return to work when a person is medically fit to do so.

Subsection (6) provides the formula for calculating the part payment of a maximum rate compensation week. This is calculated as follows:

Example

G was Chief Opposition Whip in the Senate and ceased to be a serving member as a consequence of an injury for which she was incapacitated for work. G has been in receipt of incapacity payments and is entitled to be paid for a further 10 hours at her maximum rate.

G's normal weekly earnings were calculated at \$4,593.23 and as she is not in employment and is not fit for suitable employment, the amount she is earning or is able to earn in suitable employment is currently \$0.

The payment for the remaining 10 hours G is entitled to be paid at her maximum rate is calculated base on the following formula:

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

Where:

'X' is the total hours left before G exceeds 45 times her normal weekly hours: 10.

'NWH' is: 37.5 (the notional normal weekly hours for former members).

'NWE' is G's normal weekly earnings: \$4,593.23.

'AE' is the amount G earns or is able to earn in suitable employment: \$0.

The formula is applied as follows:

$$(10/37.5) \times (4,593.23 - 0) = 1,224.86$$

Therefore G is entitled to be paid \$1,224.86 for the part of the week (10 hours) before she reaches 45 times her normal weekly hours.

Subsection (7) provides the method of calculating the incapacity payment for the remainder of the week that is a reduced rate compensation week, based on the example for subsection (6) above this would be calculated as follows:

Example

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

Where:

‘NWH’ is: 37.5 (the notional normal weekly hours for former members).

‘X’ is the total hours in the week before 45 times the covered person normal weekly hours is exceeded: 10.

‘Where the reduced rate compensation entitlement’ is the rate of compensation that would have been applicable for the whole week if subsection (8) applied. In this case where the covered person is not employed for the week, their incapacity payments are only able to supplement their income up to 75% of their normal weekly earnings under paragraph 8(a), and their incapacity payments are further reduced by any amount they are deemed to be able to earn in suitable employment. Therefore, in this case the reduced rate compensation entitlement of G under subsection (8) is 75% of \$4,593.23 (G’s normal weekly earnings): \$3,444.92.

The formula is applied as follows:

$$[(37.5 - 10)/37.5] \times 3,444.92 = 2,526.27$$

Therefore G is entitled to be paid \$2,526.27 for the part of the week that exceeds 45 times her normal weekly hours worth of incapacity payments.

Subsection (9) provides that where a covered person is entitled to a pension under a superannuation scheme as a consequence of their incapacity, then references in subsection (8) to the amount the covered person is able to earn in suitable employment are read as references to the superannuation amount payable. This subsection is intended to cover a covered person who may be in receipt of partial incapacity payments from their superannuation scheme, which would not be characterised as a benefit under section 31. Subsection (9) operates to reduce the incapacity payments of a covered person by the amount they receive in superannuation payments.

As referred to above, subsection (10) sets out matters that Comcare must have regard to when determining a covered person’s capacity to earn in suitable employment. This includes:

- any employment (including self-employment) that the covered person undertakes
- whether the covered person receives an offer of suitable employment and does not accept the offer
- whether the covered person receives an offer of suitable employment and accepts the offer but does not engage, or continue to engage, in the employment
- whether the covered person received an offer of suitable employment on the condition that the covered person undertake a reasonable rehabilitation or vocational retraining and they fail to fulfil that condition
- whether the covered person has failed to seek suitable employment
- whether it was reasonable for a covered person to not accept, engage or seek an offer of suitable employment in the circumstances
- if an assessment of the covered person’s capability of returning to work in suitable employment has been carried out under section 63 – the results of the assessment, and
- any other matter that Comcare considers relevant.

Subsection (11) provides for a cap on compensation for incapacity for a reduced rate compensation week of 150% of the Average Weekly Ordinary Time Earnings of Full-time Adults (AWOTEFA), as published by the Australian Statistician (\$2,248.95 as at 25 February 2016). If the incapacity payments calculated under subsection (8) exceed this then the amount of their weekly incapacity payments must be reduced by an amount equal to the excess.

Subsections (12) to (17) deal with minimum earnings that must be paid in respect of incapacity, providing that where a covered person's incapacity payments are less than the minimum amount they will be increased by an amount equal to the difference.

Subsection (13) provides the method for determining the minimum amount and subsections (14), (15), (16) and (17) provide for an increase to the minimum amount where the covered person has dependants.

Subsection (13) sets the minimum amount at \$454.44 a week or an amount equal to 90% of the covered person's normal weekly earnings (whichever is less).

Subsection (14) provides that where a covered person has prescribed persons who are wholly or mainly dependent on them, the minimum amount is \$566.97 or an amount equal to 90% of the covered person's normal weekly earnings (whichever is less).

A prescribed person is defined in section 5 to mean:

- the partner of the covered person, or
- any of the following who is 16 or over:
 - the parent, step-parent, father-in-law, mother-in-law, grandparent, child, stepchild, grandchild, sibling or half-sibling of the covered person
 - a person in relation to whom the covered person stands in the position of a parent or who stands in the position of a parent to the covered person
 - a person (other than the partner of the covered person or a person referred to above who is wholly or mainly maintained by the covered person and has the care of a prescribed child who is wholly or mainly dependent on the covered person (this however does not include a person who is paid to care for a child)).

A prescribed child is defined in section 5 to mean:

- a person who is under 16, or
- a person who is over 16 but under 25, is receiving full-time education, and is not ordinarily in employment or engaged in work on their own account.

Partner is defined in section 5 to mean:

- a spouse (within its ordinary meaning)
- a de facto partner, or
- if the covered person is a member of the Aboriginal race of Australia or a descendant of an Indigenous inhabitant of the Torres Strait Islands – a person who is recognised as the covered person's husband or wife by the custom prevailing in the tribe or group to which the covered person belongs.

Subsections (15) and (16) provide that the minimum amount of earnings is also increased further by \$56.22 for each prescribed child who is wholly or mainly dependent on the covered person, unless there is only one prescribed child who is also the only prescribed person wholly or mainly dependent on the covered person.

Subsection (17) provides that where a covered person has 2 or more prescribed children the additional amount under subsection (14) is applied in respect of one of those children and the additional amount under subsection (15) is applied in respect of the remaining children.

Section 30 – Compensation for injuries resulting in incapacity – Prime Minister’s spouse

Section 30 provides a method for determining incapacity payments for a covered person who is the spouse of the Prime Minister and who is incapacitated for their employment as a consequence of an injury. Section 30 will only apply where the covered person’s normal weekly earnings are not assessed as nil under section 16.

Incapacity in relation to the spouse of the Prime Minister is defined in section 13 to mean:

- an incapacity to engage in any work, or
- an incapacity to engage in work at the same level at which the covered person was engaged immediately before the injury happened.

Subsection (2) provides that the amount of weekly compensation payable to the Prime Minister’s spouse is their normal weekly earnings (see above at section 16), less the greater of either of the following:

- the amount per week (if any) that the Prime Minister’s spouse is able to earn in suitable employment (determined with reference to subsection (9) discussed below), or
- the amount per week (if any) that the Prime Minister’s spouse earns from any employment (including self employment) for the relevant week.

The incapacity payments calculated under subsection (2) have the effect of supplementing the Prime Minister’s spouse’s weekly income so that they receive total payments of 100% of their normal weekly earnings. However, consistent with section 19 of the SRC Act, there is a limit on the period of time that the Prime Minister’s spouse is entitled to be compensated for the full amount of their reduction in earnings as a result of their injury (their normal weekly earnings). A week where the Prime Minister’s spouse is entitled to be paid compensation up to 100% of their normal weekly earnings is known as a maximum rate compensation week.

Subsection (3) provides that the Prime Minister’s spouse is only entitled to receive incapacity payments under subsection (2) for the first 45 weeks of their incapacity. Each week is measured in hours, such that if a covered person was able to work half of their normal weekly hours for a week, their 45 weeks worth of incapacity payments at their normal weekly earnings would be paid over 90 weeks.

Where the period of incapacity payments received under subsection (2) is equal to 45 times their normal weekly hours, their weekly incapacity payments going forward will be based on a reduced rate compensation week. When the Prime Minister’s spouse is in a reduced rate compensation week the amount of weekly compensation they are entitled to receive, compared to subsection (2), is reduced. However, where a covered person is able to undertake some work they will progressively become entitled to a higher rate of incapacity payments in order to encourage a gradual return to fulltime employment. This is discussed further below.

Subsection (4) provides a method of calculating the amount of the incapacity payments payable for a week in which the total of the incapacity payments paid to the Prime Minister's spouse will exceed 45 times their normal weekly hours in the middle of a week. Subsection (4) provides that the formula under subsection (5) applies for the part of the week that is a maximum rate compensation week; and the formula in subsection (7) applies in respect of the remainder of the week, in accordance with subsection (6). See above at section 29 for an example of how the apportioning calculation operates.

Subsection (7) provides for an adjustment of the rate of compensation the Prime Minister's spouse is entitled to receive under this section based on the number of hours they spend in employment, any income that they earn from employment, and any income they could earn from suitable employment. The effect of this section is that, for a week that is a reduced rate compensation week a person will receive 75% of their normal weekly earnings (less any amounts they receive or could receive from suitable employment) if they are not engaging in any employment. However, this percentage increases if the covered person is employed for part or all of their normal weekly hours. For example, if a covered person was to work more than 75% but less than 100% of their normal weekly hours during that week, their incapacity payments would be calculated at 95% of their normal weekly earnings (less any amounts they receive or could receive from suitable employment). This is designed to create a financial incentive to return to work when a person is medically fit to do so.

Subsection (8) provides that where the Prime Minister's spouse is entitled to a pension under a superannuation scheme as a consequence of their incapacity then references in subsection (7) to the amount the covered person is able to earn in suitable employment are to be read as references to the superannuation amount payable. This subsection is intended to cover a Prime Minister's spouse who may be in receipt of partial incapacity payments from their superannuation scheme, which would not be characterised as a benefit under section 31. Subsection (8) operates to reduce the incapacity payments of a Prime Minister's spouse by the amount they receive in superannuation payments.

As referred to above, subsection (9) sets out matters that Comcare must have regard to when determining the capacity of the Prime Minister's spouse to earn in suitable employment. This includes:

- any employment (including self-employment) that the covered person undertakes
- whether the covered person receives an offer of suitable employment and does not accept the offer
- whether the covered person receives an offer of suitable employment and accepts the offer but does not engage, or continue to engage, in the employment
- whether the covered person received an offer of suitable employment on the condition that the covered person undertake a reasonable rehabilitation or vocational retraining and they fail to fulfil that condition
- whether the covered person has failed to seek suitable employment
- whether it was reasonable for a covered person to not accept, engage or seek an offer of suitable employment in the circumstances
- if an assessment of the covered person's capability of returning to work in suitable employment has been carried out under section 63 – the results of the assessment, and
- any other matter that Comcare considers relevant.

Subsection (10) provides that where the weekly compensation payments for the incapacity of the Prime Minister's spouse will exceed 150% of the Average Weekly Ordinary Time Earnings of Full-time Adults (AWOTEFA), as published by the Australian Statistician (\$2,248.95 as at 25 February 2016), then the amount of their weekly incapacity payments must be reduced by an amount equal to the excess.

Subsection (11) provides that there is a minimum amount of earnings that must be paid in respect of incapacity and that where incapacity payments paid to the Prime Minister's spouse are less than the minimum amount, they will be increased by an amount equal to the difference.

Subsection (12) provides the method for determining the minimum amount and subsections (14), (15), (16) and (17) provide for an increase to the minimum amount where the Prime Minister's spouse has dependants.

Subsection (12) sets the minimum amount at \$454.44 a week or an amount equal to 90% of the normal weekly earnings of the Prime Minister's spouse (whichever is less).

Subsection (13) provides that where the Prime Minister's spouse has prescribed persons who are wholly or mainly dependent on them, the minimum amount is \$566.97 or an amount equal to 90% of the normal weekly earnings of the Prime Minister's spouse (whichever is less).

A prescribed person is defined in section 5 to mean:

- the partner of the covered person, or
- any of the following who is 16 or over:
 - the parent, step-parent, father-in-law, mother-in-law, grandparent, child, stepchild, grandchild, sibling or half-sibling of the covered person
 - a person in relation to whom the covered person stands in the position of a parent or who stands in the position of a parent to the covered person
 - a person (other than the partner of the covered person or a person referred to above who is wholly or mainly maintained by the covered person and has the care of a prescribed child who is wholly or mainly dependent on the covered person (this however does not include a person who is paid to care for a child).

A prescribed child is defined in section 5 to mean:

- a person who is under 16, or
- a person who is over 16 but under 25, is receiving full-time education, and is not ordinarily in employment or engaged in work on their own account.

Partner is defined in section 5 to mean:

- a spouse (within its ordinary meaning)
- a de facto partner, or
- if the covered person is a member of the Aboriginal race of Australia or a descendant of an Indigenous inhabitant of the Torres Strait Islands – a person who is recognised as the covered person's husband or wife by the custom prevailing in the tribe or group to which the covered person belongs.

Subsections (14) and (15) provide that the minimum amount of earnings is also increased further by \$56.22 for each prescribed child who is wholly or mainly dependent on the Prime Minister's spouse, unless there is only one prescribed child who is also the only prescribed person wholly or mainly dependent on them.

Subsection (16) provides that where the Prime Minister's spouse has 2 or more prescribed children the additional amount under subsection (13) is applied in respect of one of those children and the additional amount under subsection (14) is applied in respect of the remaining children.

Section 31 – Compensation for injuries resulting in incapacity if covered person is in receipt of a superannuation pension

Section 31 sets out the amount of incapacity payments payable to a covered person who is incapacitated for work as a result of an injury under the scheme and has either ceased to be a member or retired from their employment, and they are in receipt of a pension under a superannuation scheme as a result of their retirement/cessation (subsection (1)).

Section 5 defines superannuation scheme to mean:

- the scheme established by the *Parliamentary Contributory Superannuation Act 1948*, or
- any superannuation scheme or retirement savings account where the Commonwealth (or a Commonwealth authority or licensed corporation) makes or has made contributions on behalf of the covered person. This includes a superannuation or provident scheme established or maintained by the Commonwealth (or a Commonwealth authority or a licensed corporation) for example the Commonwealth Superannuation Scheme or a self-managed superannuation fund into which the Commonwealth has made superannuation contributions.

Where subsection (1) applies to a covered person the amount of the incapacity payments that they are entitled to under this section is the same as the amount payable under either section 29 (applying to former members) or 30 (applying to the Prime Minister's spouse) as reduced in accordance with subsections (2) and (3).

Subsection (3) provides the formula for calculating the reduction. The formula uses the amount of compensation the person would otherwise receive under either section 29 or 30 (as relevant to the covered person), for:

- a week that is not a maximum rate compensation week (i.e. subsection 29(8) or 30(7) applies), and
- excluding any additional amount under either subsection 29(12) or 30(11) where the compensation is less than the minimum earnings,

and reduces that amount of compensation so calculated by an amount equal to the sum of their superannuation amount and 5% of their normal weekly earnings (see section 15 or 16, as relevant, for the calculation of normal weekly earnings).

Section 5 defines superannuation amount in respect of a pension as:

- if the scheme is the scheme established under the *Parliamentary Contributory Superannuation Act 1948*:
 - the amount of the pension minus any part of that amount assessed by Comcare to be attributable to contributions made under the scheme by the covered person (it is intended that Comcare's determination would be informed by actuarial calculations performed on behalf of the administrator of the scheme), or
 - if such an assessment cannot be made – the whole amount of the pension.
- if the scheme is another superannuation scheme, the part that is identified (if any) as the part of the pension attributable to the contributions made by the Commonwealth (or a Commonwealth authority or licensed corporation), or
- in any other case, it is the amount assessed by Comcare to be the part of the pension attributable to contributions made by the Commonwealth (or Commonwealth authority or licensed corporation) and if such an assessment cannot be made – the whole amount of the pension.

Example

B was the Manager of Government Business in the Senate, and ceased to be a serving member as a consequence of an injury for which she was incapacitated for work.

Upon cessation B became entitled to a superannuation pension of \$4,000 per week, of which \$3,000 is attributable to contributions made by the Commonwealth.

B's normal weekly earnings were calculated at \$7,176, and she remains incapacitated for any work. If B's incapacity payments were calculated under section 29 she would be entitled to incapacity payments of \$7,176 to ensure her income was still 100% of her normal weekly earnings before her injury.

The following formula in subsection (3) is used to calculate the reduction in B's incapacity payments with respect to her superannuation pension:

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

Where:

'Unadjusted amount of compensation' is the amount of the incapacity payments that B would have been entitled to if she was not in receipt of a superannuation pension: \$7,176.

'Superannuation amount' is the amount of the pension attributable to contributions made by the Commonwealth: \$3,000.

'5% of the covered person's normal weekly earnings' is 0.05 times \$7,176: \$358.80.

The formula is applied as follows:

$$7,176 - (3,000 + 358.80) = 3,817.20$$

Therefore, B's compensation payments under section 31 are \$3,817.20 per week.

The calculation of incapacity payments under this section is equivalent to the calculation under the SRC Act for Commonwealth employees that are retired and in receipt of a superannuation pension (see section 20 of the SRC Act).

Section 32 - Compensation for injuries resulting in incapacity if covered person is in receipt of a lump sum benefit

Section 32 sets the amount of incapacity payments payable to a covered person who is incapacitated for work as a result of an injury under the scheme and is in receipt of a superannuation lump sum.

Where subsection (1) applies to a covered person the amount of their incapacity payments are calculated with reference to the amount that they would have received under either section 29 (applying to former members) or 30 (applying to the Prime Minister's spouse) with a reduction applied in respect of the amount of superannuation they receive, which is calculated in accordance with subsection (3).

Subsection (3) provides the formula for calculating amount of the incapacity payments payable under this section. The formula uses the amount of compensation the person would otherwise receive under either section 29 or 30 (as relevant to the covered person), for:

- a week that is not a maximum rate compensation week (i.e. subsection 29(8) or 30(7) applies), and
- excluding any additional amount under either subsection 29(12) or 30(11) where the compensation is less than the minimum earnings,

and reduces that amount of compensation so calculated with reference to the value of the weekly interest on their superannuation lump sum and 5% of their normal weekly earnings (see section 15 or 16, as relevant, for the calculation of normal weekly earnings).

Section 5 defines superannuation amount in respect of a lump sum as:

- if the scheme is the scheme established under the *Parliamentary Contributory Superannuation Act 1948*:
 - the amount of the lump sum minus any part of that amount assessed by Comcare to be attributable to contributions made under the scheme by the covered person (it is intended that Comcare's determination would be informed by actuarial calculations performed on behalf of the administrator of the scheme), or
 - if such an assessment cannot be made – the whole amount of the lump sum.
- if the scheme is another superannuation scheme, the part that is identified (if any) as the part of the lump sum attributable to the contributions made by the Commonwealth (or a Commonwealth authority or licensed corporation), or
- in any other case, it is the amount assessed by Comcare to be the part of the lump sum attributable to contributions made by the Commonwealth (or Commonwealth authority or licensed corporation) and if such an assessment cannot be made – the whole amount of the lump sum.

Example

H was the Chair of the Joint Standing Committee on Electoral Matters and he ceased to be a serving member as a consequence of an injury for which he was incapacitated for work. H's normal weekly earnings were calculated as \$4,248.74.

Upon cessation H became entitled to a superannuation lump sum of \$2,800,000, of which \$1,800,000 is attributable to contributions made by the Commonwealth (the superannuation amount). The rate specified in the instrument in force under subsection 21(5) of the SRC Act, for the purposes of calculating the weekly interest on the lump sum, is 3.26%. The amount of compensation under subsection (3) is calculated using the following formula:

$$\text{Unadjusted amount of compensation} - \left(\text{Weekly interest on the lump sum} + 5\% \text{ of the covered person's normal weekly earnings} \right)$$

Where:

'Unadjusted amount of compensation' is the amount of H's incapacity payments had they been calculated under section 29: \$4,248.74.

'Weekly interest on the lump sum' is 3.26% of the superannuation amount (\$1,800,000) divided by 52: \$1,128.46.

'5% of the covered person's normal weekly earnings' is 0.05 times \$4,248.74: \$212.44.

The formula is applied as follows:

$$4,248.74 - (1,128.46 + 212.44) = 2,907.84$$

Therefore, H's compensation payments under section 33 are \$2,907.84 per week.

The calculation of incapacity payments under this section is equivalent to the calculation under the SRC Act for Commonwealth employees that are retired and have received a superannuation lump sum (see section 21 of the SRC Act).

As the instrument under section 21(5) of the SRC Act is a disallowable legislative instrument, the scheme incorporates the rate specified from time to time in such an instrument (as per section 14 of the *Legislation Act 2003*).

Section 33 - Compensation for injuries resulting in incapacity if covered person is in receipt of a superannuation pension and a lump sum benefit

Section 33 sets the amount of compensation for incapacity payable to a covered person who is incapacitated for work as a result of an injury under the scheme and is in receipt of a superannuation pension and lump sum. The amount of compensation payable under this section is a combination of the calculations expressed in section 31 and 32 in respect of the value of the covered person's superannuation pension and lump sum respectively.

Where subsection (1) applies to a covered person the amount of their incapacity payments are calculated with reference to the amount that they would have received under either section 29 (applying to former members) or 30 (applying to the Prime Minister's spouse) with a reduction applied in respect of the amount of superannuation they receive in accordance with subsection (3).

Subsection (3) provides the formula for calculating the amount of the incapacity payments payable under this section. The formula uses the amount of compensation the person would otherwise receive under either section 29 or 30 (as relevant to the covered person), for:

- a week that is not a maximum rate compensation week (i.e. subsection 29(8) or 30(7) applies), and
- excluding any additional amount under either subsection 29(12) or 30(11) where the compensation is less than the minimum earnings,

and reduces that amount of compensation so calculated with reference to the value of their superannuation benefit (pension and lump sum) and 5% of their normal weekly earnings (see section 15 or 16, as relevant, for the calculation of normal weekly earnings).

See sections 31 and 32 as relevant for the definition of superannuation pension and lump sum respectively.

Example

T was Manager of Government Business in the Senate and ceased to be a member as a consequence of an injury for which she was incapacitated. T's normal weekly earnings were calculated as \$6,411.38.

Upon cessation T became entitled to a superannuation pension of \$3,000 per week (of which \$2,000 is attributable to contributions made by the Commonwealth – the superannuation amount in relation to the pension) and a lump sum of \$300,000 (of which \$200,000 is attributable to contributions made by the Commonwealth – the superannuation amount in relation to the lump sum). The rate specified in the instrument in force under subsection 21(5) of the SRC Act, for the purposes of calculating the weekly interest on the lump sum, is 3.26 percent. The amount of compensation under subsection (3) is calculated using the following formula:

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

Where:

'Unadjusted amount of compensation' is the amount of T's incapacity payments had they been calculated under section 29: \$6,411.38.

'Superannuation amount in relation to the pension' is: \$2,000.

'Weekly interest on the lump sum' is 3.26% of the superannuation amount in relation to the lump sum (\$200,000), divided by 52 = \$125.38.

'5% of the covered person's normal weekly earnings' is 0.05 times \$6,411.38 = \$320.57.

The formula is applied as follows:

$$6,411.38 - (2,000 + 125.38 + 320.57) = 3,965.43$$

Therefore, T's compensation payments under section 34 are \$3,965.43 per week.

The calculation of incapacity payments under this section is equivalent to the calculation under the SRC Act for Commonwealth employees that are retired and have received a superannuation pension and lump sum (see section 21A of the SRC Act).

As the instrument under section 21(5) of the SRC Act is a disallowable legislative instrument, the scheme incorporates the rate specified from time to time in such an instrument (as per section 14 of the *Legislation Act 2003*).

Section 34 – Compensation where covered person is maintained in a hospital

Section 34 sets out the amount of compensation payable where a covered person, who has no dependants, is maintained in hospital for a continuous period of more than 1 year.

Subsection (1) provides that the Commonwealth is liable to pay compensation to the covered person, as determined by Comcare, having regard to the covered person's present and probable future needs, and the period they are likely to be a patient.

Subsection (2) provides that the amount of weekly compensation payable in any case must not be less than half the amount he or she would otherwise have received, or more than the full amount that would have been paid, by way of incapacity payments under section 28, 29, 30, 31, 32, or 33 as relevant to their circumstances.

Section 35 - Compensation for incapacity not payable in certain cases

Section 35 prescribes circumstances where compensation for incapacity is not payable, which is broadly where:

- a person is over 65 years of age; or, if they are injured when they are 63 years or older, where they have received incapacity payments for 104 weeks
- a person is imprisoned in connection with his or her conviction for an offence, or
- the person has received a redemption of compensation under section 43, unless they are entitled to recurrent payments under section 44.

Subsection (1) provides that compensation is not payable for incapacity (see sections 28, 29, 30, 31, 32, 33 and 34 above) where a covered person has reached 65 years of age, unless subsection (2) applies.

Subsection (2) provides that subsection (1) does not apply where a covered person is over 63 years of age and suffers an injury covered by the scheme. Rather, a covered person who has reached the age of 63 will be entitled to incapacity payments (see sections 28, 29, 30, 31, 32, 33 and 34 above) for a maximum of 104 weeks during which they are incapacitated. The 104 weeks does not need to be consecutive (for example, where there are weeks that a person is not incapacitated for work, these weeks will not count for the purposes of the period for which they may receive incapacity payments).

Subsection (3) provides that compensation is not payable in respect of incapacity benefits under sections 28, 29, 30, 31, 32 or 33 in respect of any period where a covered person is imprisoned in connection with their conviction for an offence.

In cases where a person has received a lump sum by way of redemption of compensation under section 43 of the instrument, subsection (4) provides that compensation is not payable for incapacity under sections 28, 29, 30, 31, 32 and 33 above, unless section 44 (recurrent payments after lump sum) also applies.

Division 4 – Injuries resulting in permanent impairment

Section 36 – Compensation for injuries resulting in permanent impairment

Section 36 sets out a covered person's entitlement to compensation where the person suffers an injury that results in a permanent impairment (see subsection (1)).

Subsection (2) provides that in determining whether an impairment is permanent, Comcare must have regard to:

- the duration of the impairment
- the likelihood of improvement in the covered person's condition
- whether the covered person has undertaken all reasonable rehabilitative treatment for the impairment, and
- any other relevant matters.

Subsections (3) and (10) provide that the maximum amount payable under this section is \$179,975.26 as indexed in line with CPI under section 21. This is the current maximum amount available for permanent impairment under the SRC Act. For current rates see:

http://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/rates_and_reimbursements/statutory_rates

The amount of compensation payable in each case is determined by Comcare in accordance with the approved Guide (see section 40 of the instrument). Subsections (4) and (5) provide that the amount payable under this section is referable to a percentage of the maximum amount and the person's degree of impairment which is also expressed as a percentage in accordance with subsection (6).

Subsections (7), (8) and (9) provide that, subject to section 37, compensation is not payable under this section if the degree of impairment is less than 10%, or the permanent impairment is a hearing loss and Comcare has determined that the hearing loss suffered by the covered person is less than 5%, unless the impairment resulted from the loss or loss of use of a finger or toe, or the loss of the sense of taste or smell.

The compensation entitlement under this section is equivalent to that available to Commonwealth employees under the SRC Act (see section 24 of the SRC Act).

Section 37 – Interim payment of compensation

Section 37 provides for an interim payment of compensation for permanent impairment to be payable in some circumstances when a final determination of the compensation has not yet been made.

Interim payments are paid at the written request of a covered person, if Comcare has not made the final determination, but is satisfied that the covered person is suffering from a permanent impairment as a result of an injury, and the degree of permanent impairment is equal to or more than 10%.

Subsection (2) provides that the interim amount must be the same percentage of the maximum amount from subsection 36(10) as the percentage determined by Comcare to be the degree of permanent impairment of the covered person.

Subsection (3) enables a further amount of compensation to be payable if, after the making the interim determination, Comcare makes a final determination that the degree of impairment is greater than the degree assessed for the purpose of the interim payment.

Subsections (4) and (5) provide that after Comcare has made a final assessment of the degree of permanent impairment, no further amounts of compensation are payable in respect of a subsequent increase in the degree of impairment unless the increase is 10% or more; or where the permanent impairment is constituted by hearing loss, unless the increase in the degree of binaural hearing loss is 5% or more.

The right to an interim payment of compensation under the scheme is equivalent to the right of Commonwealth employees to be paid interim compensation under the SRC Act (see section 25 of the SRC Act).

Section 38 – Payment of compensation

Section 38 provides that an amount of compensation payable under sections 36 or 37 (compensation for injuries resulting in permanent impairment; and interim compensation, respectively) must be paid within 30 days after of the date of assessment.

If the amount compensation is not paid, interest is payable on the amount of compensation (subsection (2)), at the rate specified in an instrument in force under subsection 26(3) of the SRC Act.

The instrument under subsection 26(3) of the SRC Act currently specifies that the rate of interest payable is the weighted average yield of 90 day bank-accepted bills, as published by the Reserve Bank of Australia, settled immediately prior to the last day of the thirty day settlement period. As the instrument under the SRC Act is a disallowable legislative instrument, the scheme incorporates the rate specified from time to time in such an instrument (as per section 14 of the *Legislation Act 2003*).

Subsection (4) provides that the 30 day period does not apply if Comcare has been requested to reconsider their determination or an application has been made to the Administrative Appeals Tribunal for review of the decision (see Part 6 below).

Section 39 – Compensation for non-economic loss

Section 39 provides for an additional amount of compensation to be paid to a covered person who has suffered permanent impairment (see section 36 above). This additional amount is payable for non-economic loss such as pain and suffering, and loss of amenities of life, suffered by the covered person. The amount of compensation payable is worked out by reference to the covered person's degree of permanent impairment determined by Comcare under section 36 and the degree of non-economic loss determined by reference to the approved Guide (see section 40).

To work out the amount of compensation, the percentages discussed above are multiplied by \$33,745.38 and added together to arrive at a lump sum payment. The amounts of compensation are equivalent to those applying to Commonwealth employees under the SRC Act (see section 27 of the SRC Act), and are indexed annually by CPI under section 21. For the current rates applying under the SRC Act see:

http://www.comcare.gov.au/claims_and_benefits/benefits_and_entitlements/rates_and_reimbursements/statutory_rates

Section 40 – Approved Guide

Section 40 provides that where the approved Guide under section 28 of the SRC Act is applied in relation to a covered person for the purposes of the scheme it should be applied in the same way as the approved Guide would be applied under the SRC Act in relation to an employee who makes a non-defence related claim (see Part 1 of the approved guide). Comcare is required by the scheme to determine compensation for permanent impairment under this Division in accordance with the approved Guide.

Division 5—Other compensation

Section 41 - Compensation for household services and attendant care services

Section 41 provides for compensation in respect of household services and attendant care services, which is payable in circumstances where, as a result of an injury covered by the scheme, a covered person obtains household services or attendant care services that he or she reasonably requires.

Subsection (1) provides that where, as a result of an injury, a covered person reasonably requires household services, the Commonwealth is liable to pay compensation of such amount as Comcare considers reasonable in the circumstances. The amount payable shall be not less than 50% of the amount payable by the covered person for those services, but is capped at \$449.92 per week (paragraph (1)(b)).

Household services is defined in section 5 of the instrument as *services of a domestic nature (including cooking, house cleaning, laundry and gardening services) that are required for the proper running of the covered person's household.*

Subsection (2) sets out the factors to which Comcare must have regard (without limitation) when determining compensation amounts under subsection (1), including:

- the extent to which household services were provided by the covered person before the injury and the extent to which they can provide those services after the date of the injury
- the number of, age of, and need for household services of other persons living with the covered person, and
- the extent to which household services were provided by the other persons in the household before the injury and, having regard to the need to avoid disruption to their employment or other activities, the extent to which they might reasonably be expected to provide household services for themselves and the covered person after the injury.

Subsection (3) provides that where, as a result of an injury, a covered person obtains attendant care services that they reasonably require, the Commonwealth is liable to pay compensation of an amount per week of the lesser of \$449.92 or an amount equal to the amount paid by the covered person for those services. Attendant care services is defined in section 5 of the instrument as *services (other than household services, medical or surgical services or nursing care) that are required for the essential and regular personal care of the covered person.* Such services would include feeding, bathing, supply of medication or other services of a personal nature.

Subsection (4) sets out the matters that, without limitation, Comcare must take into account when determining what attendant care services are reasonably required including:

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

Subsection (5) provides that the Commonwealth is not liable to pay compensation for any week within 28 days of the date of the injury unless Comcare determines otherwise on the grounds of financial hardship or the need to provide adequate supervision of dependent children.

Subsections (6) and (7) allow amounts of compensation under this section to be paid to either the covered person or the person who has provided the services, and if the amount is paid directly to the person who has provided the services it is a discharge of the liability of the covered person to pay for the services.

The amounts of compensation under this section are indexed in line with CPI under section 21 and, reflect the amounts currently available under the SRC Act including any indexation available under section 13AA of the SRC Act from 1988. For the current rates available under the SRC Act see:

Section 42 - Compensation for certain alterations etc.

Section 42 provides reasonable compensation, in circumstances where a covered person has suffered an injury resulting in impairment, for:

- alterations to a covered person's residence or place of work
- modifications of a vehicle or article used by the covered person, or
- an aid or appliance for the use of the covered person, or the repair or replacement of such aids or appliances.

This entitlement to compensation is equivalent to that which is available to Commonwealth employees under the SRC Act (see section 39 of the SRC Act).

Subsection (2) provides that compensation under this section is determined having regard to (without limitation) any of the following matters where relevant:

- the likely period during which the alteration, modification, aid or appliance will be required
- any difficulties faced by the covered person in gaining access to, or enjoying reasonable freedom of movement in, his or her place of residence or work
- any difficulties faced by the covered person in using his or her vehicle and any alternative means of transport available
- whether an aid or appliance can be rented, and
- if the covered person has previously received compensation under this section and subsequently disposed of their residence or vehicle – whether the value of the residence or vehicle was increased as a result of the alteration or modification.

Subsection (3) provides that amounts of compensation under this section may be payable to or in accordance with the directions of the covered person, or to another person who has paid the cost of the alterations under this section, or the person to whom the cost is payable. Under subsection (4), payment of the cost directly to the person to whom it is payable is a discharge of the liability of the covered person (or other person liable to pay that cost).

Division 6—Miscellaneous

Section 43 - Redemption of compensation

Section 43 provides for the redemption of the Commonwealth's liability to make further weekly payments of compensation to a covered person in certain circumstances.

Subsection 43(1) provides that where the Commonwealth is liable to make weekly payments of \$112.53 or less to a covered person in respect of incapacity (see sections 28, 29, 30, 31, 32 or 33 above) and Comcare determines that the degree of the covered person's incapacity is unlikely to change, Comcare must make a determination that the Commonwealth's liability to make further payments be redeemed by the payment of a lump sum, calculated in accordance with the formula in subsection (2). This reduces the administrative burden of making weekly compensation payments of such a small amount.

The formula in subsection (2) provides a method of determining the lump sum that is representative of the amount of weekly compensation that would be payable to the covered person if they continued to receive those payments up until the age of 65, or, where the person is over age 63 at the time of their injury, for 104 weeks while incapacitated.

Example

A covered person is 60 years of age and is entitled to weekly compensation payments of \$100.

The formula in subsection (2) is used to calculate the lump sum payable to the person in redemption of the Commonwealth's liability for ongoing incapacity payments:

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

Where:

'Amount per week' is the weekly amount of compensation: \$100.

'Specified number' is the number specified under the instrument in force under subsection 30(4) of the SRC Act: 0.03.

'n' is the number of days between the date the determination is made and the day before the covered person will cease to be entitled to incapacity payments, divided by 365 (in this case the covered person's incapacity payments will cease on their 65th birthday, therefore 'n' will be 1825/365): 5.

The formula is applied as follows:

$$\frac{52 \times 100 \times [(0.03 + 1)^5 - 1]}{0.03 \times [(0.03 + 1)^5]} = 23,663.71$$

Therefore, the amount of lump sum compensation redeemed under this section in respect of the covered person would be \$23,663.71.

The specified number is the number specified in an instrument in force under subsection 30(4) of the SRC Act. As the instrument made under subsection 30(4) of the SRC Act is a disallowable legislative instrument, in accordance with section 14 of the *Legislation Act 2003* the reference in this instrument is taken to be a reference to the instrument made under subsection 30(4) as in force from time to time.

Section 44 - Recurrent payments after payment of lump sum

Section 44 provides for reinstatement of weekly payments of compensation after a lump sum payment has been made under section 43 if the injury subsequently prevents a covered person from engaging in suitable employment.

Under subsection 44(2) the amount of compensation payable under these circumstances will be the amount that would otherwise have been payable to the covered person under section 27, 28, 29, 30, 31, 32 or 33, less the amount per week that was redeemed under section 43.

Section 45 - Cancelled determinations not to affect certain payments of compensation

Section 45 provides that the Commonwealth's liability to make weekly payments in respect of incapacity under sections 28, 29, 30, 31, 32 or 33 must be reinstated if Comcare revokes the determination to make a lump sum payment under section 43 or if that determination is set aside by a tribunal or court, unless a further determination is made by a tribunal or court that the Commonwealth's liability to make further weekly payments in respect of incapacity is to be redeemed.

Section 46 - Reduction of compensation in certain cases

Section 46 provides for the reduction of certain amounts of compensation in certain circumstances.

Subsection (1) provides that where the Commonwealth is liable to pay the covered person salary, wages or pay in respect of a day, any compensation under the following sections in respect of that day will be reduced by those amounts of salary, wages or pay:

- incapacity payments under sections 28, 29 and 30
- incapacity payments to a covered person in receipt of a superannuation amount under sections 31, 32 and 33, and
- compensation where a covered person is maintained in hospital in accordance with section 34.

Subsection (2) provides that subsection (1) does not apply in relation to any of the following amounts:

- payments in respect of long service leave sections 16 or 17 of the *Long Service Leave (Commonwealth Employees) Act 1976*
- payments in respect of long service leave under a law of a State or Territory or industrial award, determination, order or agreement
- any amount of relevant allowance or salary paid to current covered members used for the purpose of calculating their incapacity payments under section 28, or
- any other amount that the covered person is able to earn in suitable employment or any amount of earnings payable to the covered person that is taken into account in calculating the incapacity payments of former members and the spouse of the Prime Minister under sections 29 and 30 respectively.

This section ensures that where the Commonwealth is liable to pay other amounts to a person these are deducted from the compensation payable under the sections above, except to the extent that these payments have been factored into the calculation of the compensation payable under those sections.

Part 3—Services, facilities or equipment relating to risks to health or safety

Section 47 - Services, facilities or equipment relating to risks to health or safety

Section 47 provides that a covered person is entitled to services, facilities or equipment that are reasonably necessary to minimise risks to the health or safety of the covered person arising in the course of the covered person's covered activities.

The services, facilities or equipment in this section could include, but are not limited to:

- ergonomic and workplace assessments
- the provision of equipment services or facilities identified during an ergonomic or workplace assessment
- risk assessments of proposed activities
- toxicology or other health screening related to activities in the workplace
- training to support the management of work health or safety risks and compliance with Work Health & Safety legislation
- vaccination programs
- psychological services such as counselling, critical incident support, mediation and conflict resolution, or
- reasonable adjustments to the workplace consistent with the *Disability Discrimination Act 1992*.

It is intended that the benefits under this section would be provided by the Department of Finance as the department responsible for the broader parliamentary entitlements framework. Such benefits are not currently available under the SRC Act, as these are provided to Commonwealth employees by their employing agencies. However, as members and the Prime Minister's spouse do not have an employer, a head of authority is required under the entitlements framework to provide these services, facilities and equipment.

It is not intended that these benefits would be provided to a former member or a former spouse of the Prime Minister because they would not be performing any of the covered activities as defined in section 5 of the instrument to be:

- in relation to a member – the member's Parliamentary activities (activities engaged in as a member, Parliamentary office-holder or Minister, at a time when the member is entitled to a Parliamentary allowance), or
- in relation to the Prime Minister's spouse – the spouse's official activities as the Prime Minister's spouse.

Part 4—Liabilities arising apart from the scheme

Section 48 - Interpretation

Section 48 defines certain terms used in this Part.

Paragraph (a) provides that, in this Part, reference to the loss of, or damage to, property for the use of the covered person is taken to cover the circumstances referred to in section 24, where:

- a covered person has an accident arising out of, and in the course of, his or her covered activities
- the accident does not cause injury to the covered person but results in the loss of, or damage to, property for the use of the covered person, and
- the loss or damage is not attributable to the serious and wilful misconduct of the covered person.

Paragraph (b) provides that reference to a covered person in this Part, if the covered person has died, will be read as a reference to the deceased covered person's legal personal representative.

Paragraph (c) provides that reference to a dependant of a deceased covered person in this Part, where the dependant has died, will be read as a reference to the deceased dependant's legal personal representative.

Section 49 - Action for damages not to lie against Commonwealth etc. in certain cases

Section 49 operates to prevent certain actions for damages against the Commonwealth and other covered persons in certain circumstances, so that a person cannot receive compensation under the scheme and recover damages from the Commonwealth in respect of the same injury. Section 50 provides an exception to this general rule with respect to damages for non-economic loss, by allowing a covered person to elect to take action against the Commonwealth rather than receiving compensation under the scheme (see section 50 below). This is consistent with the arrangements under the SRC Act (see sections 44 and 45 of the SRC Act).

Subsection (1) provides that from the date of commencement a covered person is precluded from taking action against the Commonwealth or another covered person in respect of:

- an injury sustained in the course of his or her covered activities in respect of which the Commonwealth would otherwise be liable (vicariously or otherwise), and
- the loss of, or damage to, property used by a covered person as a consequence of such an injury.

Subsection (2) provides that subsection (1) does not prevent a dependant of a covered person from bringing an action against the Commonwealth or another covered person in respect of the death of the first mentioned covered person, where the death resulted from an injury covered by the scheme. Under subsection (3), this applies whether or not the covered person made an election before his or her death, under subsection 50(1) (see below).

Section 50 - Actions for damages—election by covered person

Section 50 allows a covered person, to whom compensation is payable under sections 36, 37 or 39 (relating to permanent impairment and non-economic loss), to elect to institute an action or proceeding against the Commonwealth or another covered person. The consequence of this election is that a person may institute such an action or proceedings (contrary to the general rule in subsection 49(1)), however the person will no longer be entitled to receive compensation under sections 36, 37 or 39 in respect of the injury (subsections (1) and (3)). An election cannot be revoked (subsection (4)).

Subsection (2) provides that such an election must be made before compensation is paid under section 36, 37 or 39 and given in writing to Comcare.

Subsection (5) provides that for any action or proceeding instituted as a result of an election a court must not award damages of an amount exceeding \$110,000 in respect of non-economic loss suffered by the covered person. This amount is not indexed under the scheme, consistent with the SRC Act (see section 45 of the SRC Act).

Subsection (6) provides that a covered person is not precluded from doing any other thing that constitutes an action for non-economic loss before, or instead of, formally instituting an action or proceeding, despite making an election under this section.

Section 51 - Notice of common law claims against third party

Section 51 deals with notice requirements where a covered person, or dependant of a covered person makes a common law claim for damages from a third party in respect of an injury covered by the scheme. These requirements are included to ensure that Comcare is aware when a covered person may recover damages from another source relating to an injury they have received compensation for under the scheme, to ensure that they are not compensated by the Commonwealth to the extent that a third party is liable for their injury. Consistent with other obligations under the scheme, and for obligations under the SRC Act, to notify Comcare of certain matters, failure to notify is a criminal offence.

Subsection (1) provides that if:

- compensation is payable under the scheme for injuries resulting in the death of a covered person, an injury to a covered person, or the loss or damage to property used by the covered person
- it gives rise to a legal liability of a third party (excluding the Commonwealth or another covered person), and
- the covered person or dependant of a deceased covered person makes a common law claim for damages against the third party in respect of the death, injury, loss or damage

the covered person or dependant must notify Comcare in writing not later than 7 days after the day of becoming aware of the claim.

Subsection (2) provides that contravention of this section is an offence of strict liability, with a maximum penalty of 5 penalty units. This offence mirrors section 46 of the SRC Act. Consistent with the *Guide to the Framing of Commonwealth Offences, Civil Penalties and Enforcement Powers*:

- the penalty does not include imprisonment and does not exceed 60 penalty units
- the offence relates to an omission and it would be difficult to establish if the prosecution was required to prove intention, as it can be very difficult to prove intention with respect to an omission to do a thing, and
- the offence and the penalty are consistent with a number of other key pieces of legislation including the SRC Act (see section 46) and the *Seafarers, Rehabilitation and Compensation Act 1992* (see section 56) which establish similar compensation schemes with similar offence provisions. The adoption of similar offences under the scheme is considered a necessary and proportionate measure to maintain the integrity of the scheme by ensuring that Comcare has information available to it that allows them to accurately assess a person's entitlement to compensation so as to appropriately safeguard Commonwealth monies.

These justifications are also applicable to the additional offences of strict liability detailed in sections 52, 53 and 89 which also relate to omissions to comply with notification requirements.

Section 52 - Notice of common law claims against Commonwealth

Section 52 deals with notice requirements where a covered person, or dependant of a covered person makes a common law claim for damages against the Commonwealth in respect of an injury covered by the scheme. This could arise in circumstances where a person has made an election under section 50, or where a dependant takes action in relation to an injury that resulted in the death of the covered person (see subsection 49(2)).

Subsection (1) specifies that if:

- compensation is payable under the scheme for injuries resulting in the death of a covered person, an injury to a covered person, or the loss or damage to property used by the covered person, and
- the covered person or dependant of a deceased covered person makes a common law claim for damages against the Commonwealth;

the covered person, or dependant, must notify Comcare in writing not later than 7 days after the day of becoming aware of the claim.

Subsection (2) provides that contravention of this section is an offence of strict liability with a maximum penalty of 5 penalty units. This offence mirrors section 47 of the SRC Act. The adoption of similar offences under the scheme is considered a necessary and proportionate measure to maintain the integrity of the scheme as outlined in the explanation to section 51 above.

Section 53 - Compensation not payable if damages recovered

Section 53 sets out the arrangements under the scheme where a person recovers damages from another source for an injury covered by the scheme, including notice requirements, requirements to make repayments, and the ongoing entitlement to compensation for the covered person or dependant.

Notice requirements

Where a covered person, or dependant of a covered person, recovers damages from a third party in respect of an injury covered by the scheme, they must notify Comcare in writing not later than 28 days after the day on which the damages were recovered (which is the day when the amount of damages was paid to, or for the benefit of, the covered person or dependant – see section 18). A person who fails to notify Comcare within this timeframe commits an offence of strict liability in accordance with subsection (3). The maximum penalty is 10 penalty units. This offence mirrors section 48 of the SRC Act. The adoption of similar offences under the scheme is considered a necessary and proportionate measure to maintain the integrity of the scheme as outlined in the explanation to section 51 above.

Repayment of compensation

Subsection (4) provides that where compensation was previously paid in respect of an injury covered by the scheme and damages are recovered from a third party in respect of the same injury, the lesser of the amount of compensation or amount of the damages received is required to be paid to the Commonwealth. However, as per subsection (6), this does not apply if the damages were recovered in an action for non-economic loss or by way of a settlement of such an action.

Subsection (8) provides that the amount of compensation that must be repaid by a dependant of a deceased covered person under subsection (4) does not include amounts of weekly compensation paid to or for the benefit of a child of a deceased covered person under subsection 26(5) (weekly compensation payable to a prescribed child of a deceased covered person).

Subsection (9) provides that if a covered person or a dependant of a covered person satisfies Comcare that part of the damages recovered did not relate to an injury, loss or damage covered by the scheme, the amount repayable under this section will be limited to the amount that did relate to that injury, loss or damage.

Entitlement to future compensation

Subsection (5) provides that where damages have been recovered by the covered person or by, or on behalf of, a dependant of the covered person, compensation is not payable under the scheme. However, subsection (7) provides that subsection (5) does not apply if the damages were recovered:

- as a result of a claim, fresh claim, or settlement of a claim made by Comcare under section 55 (where Comcare may take over claims against third parties in respect of compensation paid under the scheme)
- as a result of Comcare's taking over the conduct of a claim under section 55, or
- as a result of an action, or settlement of an action for non-economic loss.

These arrangements under the scheme are consistent to those applying to Commonwealth employees under the SRC Act (see section 48 of the SRC Act).

Section 54 - Dependants not claiming compensation

Section 54 is equivalent to section 49 of the SRC Act, which is designed to protect the Commonwealth against claim splitting. Section 54 provides for circumstances where a dependant of a deceased covered person has made a claim under the scheme and another dependant of the deceased covered person has instituted separate proceedings against a third party to recover damages in respect of the same injury.

In the event that the second named dependant recovers compensation from a third party, they will be required to repay an amount of their damages that is equal to the amount of compensation paid to the first named dependant under the scheme (subsection (2)). Where more than one dependant has recovered damages from a third party, the amount of damages payable to the Commonwealth will be split amongst the dependants (subsection (3)), using the formula prescribed in subsection (4).

Subsection (5) provides that in calculating the amount that a dependant will be liable to pay to the Commonwealth under this section, the amount of compensation to be taken into account will not include:

- compensation payable for a dependant not entitled to recover damages
- weekly payments in respect of a prescribed child of a deceased covered person (see subsection 26(5)), or
- compensation repayable by another dependant who did not claim damages (see section 53).

Section 55 - Common law claims against third parties

Section 55 gives Comcare the power to institute or take over proceedings against a third party, other than the Commonwealth or another covered person, in circumstances where the third party appears to have legal liability for an injury that is covered by the scheme. Comcare may take such action where proceedings have not been instituted or have not been fully prosecuted by the covered person or dependant of a deceased covered person (the claimant). This allows Comcare to recover compensation from persons that are responsible for injuries that would otherwise be compensable under the scheme, thereby reducing the financial impact on the Commonwealth.

This section gives Comcare the necessary powers to take actions on behalf of a covered person, including:

- taking whatever steps are appropriate to bring the claim to a conclusion (paragraph (3)(a))
- settling any proceedings either with or without obtaining a judgment (paragraph (3)(b))
- taking necessary steps to enforce a judgment (paragraph (3)(c))
- requiring the covered person or dependant to sign documents (subsection (4)), or comply with any reasonable requirement (subsection (7)), and

- receiving damages and deducting amounts and paying the balance to the covered person or dependant, on behalf of the Commonwealth (subsection 10).

Subsection (2) provides that the Commonwealth will be liable to pay the costs of the proceedings where Comcare takes over the conduct of a claim, other than costs that have been unreasonably incurred by the claimant.

Subsections (4) and (5) require a claimant, at the request of Comcare, to sign documents relevant to the proceedings, and to comply with any reasonable requirement of Comcare for the purpose of the proceedings. Where a claimant refuses to sign a document relevant to the claim and the proceeding is before a court or tribunal, that court or tribunal may (upon the application of Comcare) direct that the document be signed by a person appointed by Comcare on behalf of the person. Where the proceeding is not before a court or tribunal an application may be made to the Federal Court of Australia and the court may direct that a person appointed by Comcare sign on behalf of the claimant.

Subsection (6) provides that where an application is made under subsection (5) for a direction to allow a person appointed by Comcare to sign a document on behalf of a claimant, Comcare must notify the claimant of their intention to make such an application and the claimant has a right of representation in the hearing of that application.

Subsections (7), (8) and (9) provide that where Comcare makes or takes over the conduct of a claim under this section the claimant must comply with any reasonable requirement of Comcare for the purposes of the claim and if they fail to do so, their right to compensation in respect of the injury, loss, damage or death to which the claim relates is suspended until they comply with the requirement. If the suspension of a claimant's right to compensation is later revoked, they will not be entitled to be back paid for the period of the suspension. A suspension under these subsections does not apply in relation to compensation for medical treatment (see section 25).

Subsection (10) provides that Comcare will deduct from any damages obtained as a result of a claim made or taken over by Comcare under this section, an amount equal to the amounts of compensation paid to the claimant and the costs of the proceedings. The remainder will be payable to the claimant.

Subsection (11) provides that no further amounts of compensation will be payable to the claimant under the scheme until the amount of compensation that would otherwise be payable to the person under the scheme exceeds the amount paid to the claimant under subsection (10).

Section 56 - Payment of damages by persons to the Commonwealth

Section 56 provides Comcare with the power to require that damages payable to a covered person or dependant are to be paid directly to the Commonwealth in certain circumstances, which establishes a process by which overpayments of compensation by Comcare may be avoided. This applies where a third party, other than the Commonwealth or a covered person, is liable or has agreed to pay damages to a covered person or dependant in respect of an injury covered by the scheme (subsection (1)).

Under subsections (1) and (2) Comcare may issue a written notice to the third party who is liable to pay damages, or has agreed to pay damages, requiring the third party to pay an amount of the damages to Comcare. The amount must not exceed the amount of compensation that the covered person or dependant would be liable to pay to the Commonwealth under section 53 or 54 if the damages had been paid directly to them.

Under subsection (3) if the third party pays the damages to the covered person or dependant before receiving a notice from Comcare under subsection (1) or (2) then:

- if all of the damages have been paid – the notice has no force or effect, or
- if part of the damages have been paid, a reference to the amount of damages in the notice is to be read as a reference to the amount of damages that have not been paid.

Where a person fails to comply with a notice issued under this section then the amount of damages is recoverable from that person in a court of competent jurisdiction as a debt due to the Commonwealth (subsection (4)).

The payment of such damages to the Commonwealth will discharge, to the extent of that payment, the liability of the third party to the covered person or dependant (subsection (5)).

Section 57 - Comcare's rights and obligations in respect of certain action for non-economic loss

Section 57 sets out rights and obligations of parties in respect of claims for non-economic loss taken by a covered person against the Commonwealth or another covered person (the party claimed against) (subsection (1)).

In these circumstances Comcare may take over the claim on behalf of the party claimed against and, if the action is before a court, Comcare may make an application to join other parties in the proceeding (subsection (2)). Where Comcare takes over such a claim, the Commonwealth is liable to pay reasonable costs incurred by the party claimed against (subsection (3)). The Commonwealth is also liable to pay any damages that are awarded against the party claimed against or settlement amount agreed that involves the payment of an amount by the party claimed against (subsection (8)), and such payment is a discharge of the liability of the party claimed against to pay that amount (subsection (9)). However, any amount that is payable by way of costs to the party claimed against is payable to the Commonwealth (subsection (10)).

In exercising its powers under this section, Comcare may take whatever steps are appropriate to bring the proceedings to a conclusion, and, if the action is before a court, settle the proceeding with or without obtaining judgment, and enforce any judgment obtained (subsection (4)).

The party claimed against must comply with any reasonable requirement of Comcare, including by signing documents relevant to the conduct or settlement of the action (subsection (5)). If the party claimed against fails to sign a document as required by Comcare, Comcare may apply for directions from the Federal Court, if the action is not before a court or tribunal at the time of the failure, for the document to be signed on behalf of the party claimed against by a person appointed by Comcare. Where the proceeding is before a court or tribunal, that court or tribunal may (upon the application of Comcare) direct that the document be signed by a person appointed by Comcare on behalf of the party claimed against (subsection (6)). Comcare must notify the party concerned of its intention to make an application, and the person has a right to be represented (subsection (7)).

Part 5—Claims for compensation

Section 58 - Notice of injury or loss of, or damage to, property used by a covered person

Section 58 sets out the notice requirements for claims concerning injury or loss of, or damage to, property used by a covered person.

Subsections (1) and (2) provide that for an injury or loss of, or damage to, property used by a covered person to be covered under the scheme, notice must be given in writing to Comcare:

- as soon as practicable after the covered person becomes aware of the injury, or
- if the covered person has died before they became aware of the injury, or before it was practicable to provide notice – as soon as practicable after the covered person’s death.

Subsection (3) provides that where a notice purporting to be notice under the scheme has been given, but does not comply with the requirements of this section it will still be taken to be good notice so long as:

- the Commonwealth would not, by reason of the non-compliance, be prejudiced, or
- the non-compliance resulted from a reasonable cause such as the death of a person, the absence of a person from Australia, ignorance or a mistake.

Section 59 - Claims for compensation

Section 59 sets out the requirements for making a claim under the scheme.

Subsection (1) provides that compensation is not payable under the scheme unless a claim is made in accordance with this section.

Subsection (2) provides that a claim must be made by giving Comcare:

- a written claim in accordance with the form approved, in writing, by Comcare for the purposes of paragraph (2)(a), and
- where the claim is for medical and related expenses (section 25) or for injuries resulting in death (section 26) – a certificate by a legally qualified medical practitioner in accordance with the form approved, in writing, by Comcare for the purposes of paragraph (2)(b).

Subsection (3) provides that where a claim made under section 25 or 26 is not accompanied by a certificate from a legally qualified medical practitioner (as required by paragraph (2)(b)), then the claim is taken not to have been made until such a certificate is given to Comcare.

Section 60 - Survival of claims

Section 60 sets out how the scheme applies to compensation where the person entitled to compensation dies.

Subsection (1) provides that if a person who is entitled to make a claim for compensation dies without making a claim, a claim may be made by the person’s legal representative.

Subsection (2) provides that a claim will not be affected by the subsequent death of a claimant after a claim was served.

Subsection (3) provides that section 80 will apply 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. Section 80 deals with how payments under the scheme will be paid where the beneficiary of the payment is deceased.

Subsection (4) provides that this section does not apply to claims for compensation for non-economic loss (see section 39 above).

Section 61 - Claims may not be made in certain cases

Section 61 provides that where a compensation payment has been made to, or on behalf of, a dependant (or dependants) in respect of an injury that resulted in the death of a covered person under subsection 26(3) or (4), no other dependant will be entitled to claim compensation under section 26 after the date on which the amount is paid. Further clarification is provided in:

- subsection 26(10) which provides where there is more than one claim by a dependant under section 26 (compensation in respect of the death of a covered person), then Comcare will treat all claims as one claim and make one determination in respect of those claims, and
- section 54 which is designed to protect the Commonwealth against claim splitting and requires dependants to repay amounts of damages recovered in respect of compensation paid under the scheme in certain circumstances.

Section 62 - Comcare's power to require medical examination

Section 62 applies where a covered person has given notice of an injury or damage to property under section 58 of the instrument, or where the covered person has made a claim for compensation under section 59 of the instrument.

Where such an action has been taken by the covered person, Comcare may require the covered person to undergo an examination by one legally qualified medical practitioner as nominated by Comcare (subsection (1)). This subsection is intended to be interpreted consistently with paragraph 57(1)(b) of the SRC Act, which has been interpreted to mean that a person may be required to undergo more than one medical examination, but not by more than one doctor at a time such as would be the case where a panel assessment took place. A covered person must not be required to submit for a medical examination at more frequent intervals than are specified in the instrument as in force under section 57(6) of the SRC Act (subsection (6)). As the instrument made under subsection 57(6) of the SRC Act is a disallowable legislative instrument as per section 14 of the *Legislation Act 2003*, this instrument has been incorporated into this instrument as in force from time to time.

Where a covered person refuses or fails, without reasonable excuse, to undergo an examination the covered person's right to compensation and to institute or continue any proceedings will be suspended until the examination takes place (subsection (2)). Where a person's right to compensation is suspended, compensation will not be payable to the covered person for the period of the suspension, even if the suspension is later revoked (subsection (5)).

Subsection (3) provides that the Commonwealth must pay the cost of the examination and the reasonable costs that the covered person incurs in travelling to, or remaining at, the place where the examination takes place.

Subsection (4) provides the matters which Comcare must have regard for under subsection (3) in determining what costs are reasonable, such as the means of transport available, the route by which the covered person could travel and the accommodation available to the covered person.

Section 63 - Assessment of employment capability

Section 63 provides that Comcare may, and must on the written request of the covered person, arrange for the assessment of the covered person's capability of returning to work in suitable employment. The assessment will be carried out by a legally qualified medical practitioner, other suitably qualified person, or a panel comprising such persons, as nominated by Comcare.

Where a covered person refuses or fails, without reasonable excuse, to undergo an examination as to his or her suitability for rehabilitation under this section, the covered person's entitlement to weekly compensation in respect of incapacity (see sections 28, 29, 30, 31, 32 and 33 above) will be suspended (subsections (3) and (4)), other than their right to compensation for medical treatment under section 25 (subsection (5)). Compensation will not be payable in respect of the period of suspension, this means that if the suspension is later revoked the covered person is not entitled to be back paid for the period of the suspension (subsection (8)).

The Commonwealth is liable to pay the costs of conducting the examination as well as reasonable travelling and accommodation costs incurred by the covered person in connection with that examination (subsections (6) and (7)).

The person or persons who conducted the examination must give Comcare a written assessment of the covered person's capability of returning to work in suitable employment and specifying, where appropriate, the hours and level at which the covered person is capable of working (subsection (9)). An assessment under this section will be taken into account by Comcare in determining the amount that a covered person in receipt of compensation for incapacity under section 29 or 30 is able to earn in suitable employment, for the purposes of calculating their incapacity compensation payment (see paragraphs 29(10)(g) and 30(9)(g)).

Section 64 - Comcare's power to request the provision of information

Section 64 applies where Comcare is satisfied that a claimant has information or a document relevant to a claim under the scheme, or can obtain such information or a copy of such a document.

Subsection (1) provides Comcare with the power to request that the claimant provide the information or document within 28 days after providing written notice requesting the information or document. Comcare may also allow an extension to the 28 day time frame.

Subsection (2) provides if a claimant refuses or fails to comply with such a request, Comcare may refuse to deal further with the person's claim until the request is complied with.

Section 65 - Comcare must supply certain documents on request

Section 65 requires Comcare, on request, to give a covered person any document held by Comcare in relation to a claim. This section also applies to the determination of a request made under section 37, which relates to interim payments of compensation.

Part 6—Reconsideration and review of determinations

Section 66 - Definitions

Part 6 provides for the reconsideration and review of decisions and determinations by Comcare under the scheme. The decisions and determinations that are reviewable under this part are:

- the determination of normal weekly earnings for a member (section 15) or the Prime Minister's spouse (section 16)
- the determination of a covered person's general entitlement to compensation for injuries (section 23)
- the determination of a covered person's entitlement to compensation for the loss of or damage to property used by the covered person (section 24)
- the determination of a covered person's entitlement to compensation for medical and related expenses (section 25)

- the determination of compensation payable to dependants for injuries resulting in the death of a covered person (section 26)
- the determination of compensation payable in respect of funeral expenses (section 27)
- the determination of compensation payable for injuries resulting in incapacity for sitting members (section 28), former members (section 29) and the Prime Minister's spouse (section 30)
- the determination of compensation payable to a covered person who has retired and is in receipt, or has received, one or more different types of superannuation benefits (sections 31, 32 and 33), or where the covered person is maintained in a hospital for over one year (section 34)
- the determination of compensation payable to a covered person for injuries resulting in permanent impairment (section 36, including the interim payment of compensation (section 37) and compensation for non-economic loss (section 39)
- the determination of compensation payable in respect of household services and attendant care services (section 41)
- the determination of compensation payable in respect of alterations, modifications and aids and appliances (section 42)
- the determination of the amount of compensation payable in redemption of ongoing compensation payments (section 43)
- the determination of recurrent payments of compensation after a lump sum has been paid as redemption under section 43 (section 44)
- the determination that a covered person must undergo an assessment of their capability of returning to work in suitable employment (section 63)
- a decision relating to the reconsideration by Comcare of a determination under the scheme (section 69), and
- the determination of whether an overpayment of compensation has occurred under paragraph 85(6)(a).

Section 66 also provides for the definition of certain terms used in this Part.

Section 67 - Parties to proceedings

Section 67 provides that for the purposes of proceedings under this Part any reference to 'parties' is taken to mean Comcare and the applicant.

Section 68 - Making and notification of determinations

Section 68 sets out the requirements for notifying claimants of determinations made under the scheme. Determination is defined in section 66 as meaning determinations, decisions or requirements made under the sections specified, which have been listed above.

Subsection (1) provides that Comcare must consider and determine a claim for compensation under section 23 (compensation for injuries) within *the period (if any) prescribed by the regulations made for the purposes of subsection 61(1A) of the SRC Act*. There is currently no period prescribed for the purposes of that subsection, however as regulations under the SRC Act are a disallowable legislative instrument, such period prescribed will be incorporated into the scheme as it applies from time to time (see section 14 of the *Legislation Act 2003*).

Subsection (2) provides that Comcare must, as soon as practicable after a determination has been made, serve on the claimant a notice setting out the terms of the determination, the reasons for the determination, and a statement to the effect that the claimant may request the determination to be reconsidered under section 69(2).

Subsection (3) provides that determinations under subsection 25(1) (compensation for medical and related expenses) do not have to comply with the requirements of this section where the full amount of medical expenses claimed under that provision is payable by a Comcare to a person other than the covered person.

Section 69 - Reconsideration of determinations

Subsection 69 provides for determinations under the scheme to be reviewable.

Subsections (1) and (2) allow Comcare to review a determination made by Comcare on its own motion or at the request of a claimant. Where a determination is reconsidered Comcare must either reconsider the determination, or cause the determination to be reconsidered by a person who is delegated the power to reconsider determinations; and did not make, and was not involved in the making of, the original determination (subsections (1) and (4)).

Where the claimant requests reconsideration, subsection (3) provides that the request must set out the reasons for that request and must be given to the Comcare within 30 days of the day on which the determination first came to the notice of the claimant. Comcare may also extend this period of time at its discretion.

Subsection (5) provides that the person reconsidering the determination may make a decision that affirms, revokes or varies the original determination as the person thinks fit.

Subsection (6) provides that the person must reconsider the determination within *the period prescribed by the regulations made for the purposes of* subsection 62(6) of the SRC Act. There is currently no period prescribed for the purposes of that subsection, however as regulations under the SRC Act are a disallowable legislative instrument, such period prescribed will be incorporated into the scheme as it applies from time to time (see section 14 of the *Legislation Act 2003*).

Section 70 - Reviewable decision to be notified in writing

Section 70 requires Comcare, as soon as practicable after a reviewable decision has been made, to serve on the claimant a notice setting out the terms of the reviewable decision, the reasons for the decision, and a statement to the effect that the claimant may apply to the Administrative Appeals Tribunal to have the decision reviewed. Reviewable decision is defined in section 66 to be a decision made under section 69, which provides for the reconsideration of determinations by Comcare.

Section 71 - Applications to the Administrative Appeals Tribunal

Section 71 enables an application to be made to the Administrative Appeals Tribunal for review of a reviewable decision (a determination which has been reconsidered by Comcare under section 69). Such an application may only be made by the claimant.

This section mirrors section 64 of the SRC Act which also allows the Commonwealth or a Commonwealth authority or licensed corporation to make such an application. This is because under the SRC Act an employer of an employee is likely to be affected by a decision of Comcare and may wish to make an application in respect of a decision by Comcare. This scheme differs from the SRC Act in that members and the spouse of the Prime Minister are not employed by a Commonwealth or a Commonwealth authority or licensed corporation that is likely to be affected by a decision of Comcare in relation to a claim. It was therefore not considered necessary to provide for bodies or persons other than the claimant to make an application in respect of a decision made by Comcare.

Section 72 - Modifications of the *Administrative Appeals Tribunal Act 1975*

Section 72 makes certain modifications to the application of the *Administrative Appeals Tribunal Act 1975* (AAT Act) to reviews under the scheme. Subsection (3) modifies subsection 29(2) of that Act to enable an application for review to be lodged within 60 days, rather than 28 days, of the claimant being made aware of the reviewable decision. These modifications are consistent with the way applications are treated under the SRC Act in accordance with section 65 of the SRC Act. It was considered appropriate that claims under this scheme be treated in the same way, given the substantial similarities between the schemes.

Section 73 - Evidence in proceedings before Administrative Appeals Tribunal

Section 73 provides certain rules for adducing evidence in proceedings before the Administrative Appeals Tribunal.

Subsection (1) provides that unless a claimant discloses to the Tribunal at least 28 days before the date of the hearing a matter which he or she intends to adduce, that matter will not be admissible without leave of the Tribunal.

Subsection (2) provides that where Comcare has given the claimant a notice requesting that a document or information be provided (see section 64 above) and the claimant has failed to comply with that notice, that document or information will not be admissible without leave of the Tribunal.

Subsection (3) provides that leave will not be granted unless the claimant provides a statement of reasons why he or she failed to comply with the notice and the Tribunal is satisfied that there are special circumstances justifying its admission.

These requirements relating to evidence are consistent with the requirements for Commonwealth employees under section 66 of the SRC Act.

Section 74 - Costs of proceedings before Administrative Appeals Tribunal

Section 74 sets out the responsibility for costs in a proceeding before the Administrative Appeals Tribunal.

The general rule is that costs incurred in relation to proceedings before the Tribunal are to be borne by the party that incurred those costs (subsection (1)). However, this section provides for circumstances where the Commonwealth must pay the costs of the claimant (subsection (2), unless an exception in subsection (3) or (4) applies; and subsection (9)), unless an exception in subsection (11) or (12) applies), or where the Tribunal may order that the Commonwealth must pay the costs of the claimant (subsection (8)).

How this section applies depends on whether the proceedings in the Tribunal are aborted before the Tribunal makes a decision (subsections (2) to (7)), or whether the proceedings are concluded by a decision of the Tribunal (subsections (8) to (14)).

Costs where proceedings are aborted

Subsection (2) provides that, where proceedings before the Tribunal are aborted because a determination has been reconsidered under subsection 69(1) of the instrument, the Commonwealth is liable to reimburse the claimant for costs reasonably incurred in relation to those proceedings. However, the Commonwealth will not be liable to pay the costs where Comcare makes a declaration under subsection (3) or (4) (subsection (5)).

Subsections (3) and (4) provide that, where the Comcare had made a request under section 64 for a claimant to provide information or a document and the claimant had failed to comply with that request, the Commonwealth will not be liable to reimburse the claimant under subsection (2) if Comcare has reconsidered the claim on the basis of the information or document and has made a new determination that is more favourable to the claimant; and makes a declaration that it is satisfied that it would have made that determination originally had the information or document been made available. Subsection (7) provides that a decision to deny costs under subsection (3) or (4) will itself be capable of review by the Tribunal.

Subsection (6) provides that Comcare must provide the claimant with a copy of the declaration made under subsection (3) or (4).

Costs where Tribunal makes decision

Where the Tribunal makes a decision varying or setting aside a reviewable decision and making a decision more favourable to the claimant, the Tribunal may order that the claimant's costs be paid by the Commonwealth (subsection (8)). If the Tribunal sets aside a reviewable decision and remits the case for re-determination by the determining authority, the Tribunal must, subject to this section, order that the claimant's costs are to be paid by the Commonwealth (subsection (9)). However, the Tribunal cannot order the Commonwealth to pay the claimants costs in relation to an application made by the claimant for an extension of time to make an application for review to the Tribunal (subsection (10)).

The power of the Tribunal to order costs to be payable by the Commonwealth is subject to the same exceptions where Comcare requested information or documents under section 64 and the person failed to provide the information or documents (see subsections (3) and (4) above). In these circumstances, the Tribunal must be satisfied that if Comcare had the information or document at the time of making the original determination, it would have made a determination more favourable to the claimant (subsections (11) and (12)).

Subsection (13) provides that where the Tribunal has made an order for costs against the Commonwealth, in the absence of an agreement, the Tribunal may tax or settle the amount of costs, or order that the costs be taxed or settled by an officer of the Tribunal. The AAT Act provides that an officer of the Tribunal means:

- the Registrar, or
- a person appointed as an officer of the Tribunal under section 24PA of the AAT Act.

Section 24PA of the AAT Act provides for a number of criteria that must be satisfied before appointing a person to be an officer of the Tribunal.

Subsection (14) provides that for the purposes of section 69A of the AAT Act, the Commonwealth is taken to be a party to a proceeding under the scheme. Section 69A sets out the procedure for taxing costs under the AAT Act.

The arrangements for the payments of costs for AAT proceedings under the scheme are consistent with those applying to Commonwealth employees under section 67 of the SRC Act.

Part 7—Administration

Section 75 - Functions

Section 75 describes the functions Comcare has under the scheme (in addition to other functions under the scheme elsewhere in the instrument and the SRC Act). This includes:

- determining claims under the scheme accurately and quickly
- making payments under the scheme on behalf of the Commonwealth
- publishing material relating to its function in determining claims under the scheme accurately and quickly, and
- taking over claims against the Commonwealth or a covered person in respect of non-economic loss.

Comcare has various other powers and functions under the scheme, including:

- determining eligibility and amounts of compensation payable under the scheme in respect of:
 - medical expenses (see section 25)
 - lost earnings as a consequence of incapacity to work (see sections 28, 29, 30, 31, 32 and 33)
 - permanent impairment (see sections 36, 37, 38 and 39)
 - alteration of place of residence or place of work (see section 42)
 - modifications of a vehicle or article (see section 42)
 - aids or appliances, or the repair or replacement of such aids or appliances (see sections 24, 25 and 42)
 - death benefits (see section 26) , and
 - funeral expenses (see section 27)
 - household and attendant care services (see section 41)
 - a person maintained in hospital (see section 34)
- determining to whom amounts, and what proportion of those amounts, of compensation are payable under the scheme (for example, medical providers or dependants of claimants) (see section 26 – death benefits and section 27 – funeral expenses)
- managing the conduct of claims in connection with the scheme including:
 - receiving and issuing notices, and
 - collecting and storing information
- reviewing determinations made under the scheme (see such determinations will also be reviewable by the Administrative Appeals Tribunal) (see Part 6 – Reconsideration and review of determinations)
- requesting information or documents relevant to a claim connected with the scheme (see section 64 – Comcare’s power to request the provision of information)

- arranging for medical examinations and assessments in accordance with the scheme (see section 62 – Comcare’s general power to require medical examination and section 63 – Concerned with arranging a medical assessment of a person’s employment capability)
- ceasing, suspending or revoking payments of compensation in accordance with the scheme (see sections 55, 62, 63 which provide Comcare with the power to suspend compensation in certain circumstances), or to cease dealing with a claim until requested information has been provided (section 64)
- exercising the Commonwealth’s subrogation rights under the scheme (see sections 57 and 75)
- receiving recovered compensation in accordance with the scheme on behalf of the Commonwealth (see section 82)
- recovering debts or overpayments under the scheme on behalf of the Commonwealth (see sections 82 and 83)
- debt waiver, write-off and setting-off in accordance with the scheme (see sections 86 and 87), and
- holding money on trust in accordance with the scheme (see section 79).

The general power of Comcare in relation to the functions listed above (and its functions under the SRC Act) is contained in section 70 of the SRC Act.

Section 76 - Power to obtain information from Commonwealth entities

Section 76 provides Comcare with the power to require Commonwealth entities to provide information relevant to a claim in certain circumstances.

Subsection (1) provides that Comcare may give written notice that requires the principal officer of a Commonwealth entity to give Comcare, within the period specified in the notice, specified information that is, or documents that are, in the possession, custody or control of the Commonwealth entity and relevant to a claim made by or in relation to a covered person.

Subsection (2) provides that the principal officer must comply with the notice.

This section is intended to assist Comcare in determining the eligibility of covered persons for certain payments of compensation. For example, it may be used to request confirmation of a covered person’s salary to determine an amount of compensation payable, or information on the activities that a covered person undertook on a particular day in order to corroborate the information provided by a covered person making a claim under the scheme.

Section 77 - Manner in which claims are to be determined

Section 77 provides guidance on the manner in which Comcare makes determinations accurately and quickly as per paragraph 75(a).

Section 77 provides that Comcare:

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

Part 8—Miscellaneous

Section 78 - Determinations to be in writing

Section 78 requires determinations under the scheme to be in writing. A determination will be taken to be in writing if it is entered into, or recorded with the use of, a computer.

Section 79 - Money paid to Comcare for benefit of person

Section 79 applies where an amount of compensation under the scheme is payable to a person who is under a legal disability.

In these circumstances Comcare may pay the money to another person for the benefit of the person who is under a legal disability, or pay the money to itself for that purpose.

Where the money is held by Comcare for the benefit of the person who is under a legal disability, the money must be invested and held on trust, to be paid for the benefit of the person who is under the legal disability (subsections (2) and (3)).

Subsection (4) provides that if the person who is under a legal disability ceases to be under a legal disability then Comcare must pay any money it holds to that person or at that person's direction.

Section 80 - Provisions applicable on death of beneficiary

Section 80 provides that, if a person dies before an amount of compensation, owed or held, is paid, that amount forms part of the estate of the person (subsections (1) and (2)), unless the person dies intestate and no other person is entitled to claim the estate. In that event, the money must be paid to the Commonwealth (subsections (3) and (4)). This section does not limit the power of Comcare in making a decision under section 69 (subsection (5)).

Section 81 - Assignment, set-off or attachment of compensation

Section 81 sets out the only circumstances where an amount of compensation under the scheme can be assigned, set off or attached.

Subsection (1) specifies that any assignment of compensation payable under the scheme is void.

Subsection (2) provides that debts owed to the Commonwealth or Comcare under this scheme must not be set off against any further amount of compensation payable to the covered person or dependant, unless otherwise provided for under the scheme (see sections 82 and 83).

Subsection (3) provides that compensation may only be attached under the scheme in accordance with any of the following:

- the *Child Support (Registration and Collection) Act 1988*
- the *Social Security Act 1991*, and
- the *Family Law Act 1975* and its regulations.

Section 82 - Recovery of amounts due to the Commonwealth

Section 82 provides that where Comcare holds money under the scheme on behalf of a person (see section 79 above) and the person owes a debt to the Commonwealth under this instrument, Comcare must offset the money held, against the money the person owes to the Commonwealth under this instrument, including by realising any investments. An action under this section will be taken to be a discharge of Comcare's liability to the person and the person's liability to the Commonwealth.

Section 83 - Recovery of overpayments

Section 83 provides that any amounts of overpayments under the scheme are debts due to the Commonwealth and are recoverable by Comcare in a court of competent jurisdiction.

Subsection (2) further provides that Comcare may offset any debt owed to a person under the scheme against any money owed to that person under the scheme.

Section 84 - Notice to Comcare of ceasing to be a member etc.

Section 84 applies where a covered person is receiving or is entitled to receive compensation under the scheme, and they cease to be a member or retire from their employment. Section 84 provides that the covered person must give written notice to Comcare as soon as practicable to advise of the date of their cessation or retirement, and the details of the superannuation scheme of which they were a member at the time of cessation or retirement. This requirement will assist Comcare in its administration of the scheme and ensuring that overpayments of compensation do not occur.

Section 85 - Power to obtain information from administrators of superannuation schemes

Section 85 provides Comcare with certain powers to request information in relation to, and from, any superannuation schemes a covered person may be a member of in certain circumstances, to ensure that any potential overpayments under the scheme can be dealt with efficiently and recovered, if necessary.

Subsection (1) provides that this section applies where:

- a covered person ceases to be a member and is or may be entitled to a superannuation benefit as a consequence of their cessation, or
- where a covered person retires from their employment and is or may be entitled to a superannuation benefit

and Comcare is of the opinion that an overpayment has or may have been made to the covered person as a consequence of the operation of sections 31, 32 or 33 (incapacity payments where a covered person is in receipt of a superannuation benefit).

Subsection (2) provides that Comcare may give written notice to the administrator of the superannuation scheme advising them of the possibility of the overpayment and require that the administrator:

- advise Comcare whether the covered person has received a superannuation benefit under the superannuation scheme or whether a benefit has been deferred, and
- if the person has not received any such payment, give Comcare the details of any superannuation benefit payable to the covered person under the superannuation scheme.

Subsection (3) provides that the administrator must comply with the notice.

Subsection (4) provides that Comcare must advise the covered person that notice has been given under subsection (2) and provide information in relation to this section.

Subsection (5) provides that subsections (6), (7), (8) and (9) apply where the covered person has received a superannuation benefit.

Subsection (6) provides that where Comcare has received details from the administrator of the value of the superannuation benefit paid they must calculate whether an overpayment of compensation under the scheme has occurred and advise the covered person of their conclusion within 2 working days.

Subsection (8) provides that the covered person is liable to pay any overpayment amount to the Commonwealth and subsection (9) provides that the amount of compensation due to the covered person under the scheme cannot be reduced until the covered person has been advised of the overpayment in accordance with subsection (6).

Section 86 - Comcare may write off debt

Section 86 provides Comcare with the power to write off a debt that is due to the Commonwealth under the scheme. Where a debt is written off Comcare still reserves the right to pursue the debt on behalf of the Commonwealth at a later date.

Section 87 - Comcare may waive debt

Section 87 provides Comcare with the power to waive the right to recover a debt in whole or in part that is due to the Commonwealth in accordance with the scheme. Where a debt is waived it will be effectively extinguished at law and can no longer be pursued.

Section 88 - Compensation where State compensation payable

Section 88 applies to the payment of compensation under the scheme to a covered person who has recovered compensation under a State compensation scheme, in respect of the same injury, other than workers' compensation under a law of a State or Territory. This might include third party motor vehicle accident schemes or victims of crime compensation schemes.

Subsection (2) provides that the amount of compensation payable under the scheme to a covered person or a dependant of a deceased covered person who has recovered State compensation is the amount that would have been payable, less the amount that was paid under the State compensation scheme.

Subsection (3) requires a person who receives an amount under a State compensation scheme in respect of an injury for which compensation has been paid under this scheme, to repay the lesser of the amount of compensation received under this scheme, or the State compensation amount.

Subsection (4) provides that if a person owes money to the Commonwealth under this section and another person holds on behalf of that person (the debtor) amounts of compensation payable under this scheme or a State compensation scheme (including investments acquired out of such compensation), that person must deduct from the held money, or realise the investments held, and pay to the Commonwealth the amount owed by the debtor to the Commonwealth.

Subsection (6) exempts from recovery any part of the State compensation which Comcare is satisfied did not relate to an injury, loss or damage for which compensation is payable under this scheme.

Subsection (7) provides that under this section State compensation means compensation recoverable under a specified law (within the meaning of section 119 of the SRC Act). Section 119 of the SRC Act provides that a specified law is a law of a State or of a Territory that provides for the payment of compensation, other than workers' compensation, and is declared by the Minister, by legislative instrument, to be a specified law for the purposes of the SRC Act.

Section 89 - Notice of departure from Australia etc.

Section 89 sets out notice requirements where a covered person in receipt of compensation under sections 28 to 30 (weekly incapacity payments) proposes to leave Australia, whether or not the person proposes to return to Australia. This notice requirement applies where the person has been receiving weekly incapacity payments for a total period of 3 months or longer (subsection (1)), and a criminal offence applies for a failure to comply with the notice requirements.

Subsection (2) requires the covered person to notify Comcare in writing in circumstances where they propose to leave Australia, including specifying the date on which the person proposes to leave.

Subsection (3) provides that where a covered person has failed to give notice prior to their departure, they must give notice within 7 days of their departure, stating that they have left Australia and the date on which they did so.

Subsection (4) provides that where a covered person has been absent from Australia for more than 3 months, they must notify Comcare of their current residential address at three monthly intervals (within 7 days after the expiration of the 3 month intervals).

Subsection (5) provides that it is a strict liability offence if a person is subject to the requirement to notify in subsections (3) and (4), and subsequently fails to perform one of these requirements. The maximum penalty for committing the offence is 5 penalty units. This offence mirrors section 120 of the SRC Act. The adoption of similar offences under the scheme is considered a necessary and proportionate measure to maintain the integrity of the scheme as outlined in the explanation to section 51 above.