



# Parliamentary Injury Compensation Scheme Instrument 2016

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I, Mathias Cormann, Minister for Finance, make the following instrument.

Dated 29 April 2016

Mathias Cormann  
Minister for Finance

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## Part 1—Preliminary

### 1 Name

This is the *Parliamentary Injury Compensation Scheme Instrument 2016*.

### 2 Commencement

- (1) 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 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) the day Schedule 1 to the <i>Parliamentary Entitlements Amendment (Injury Compensation Scheme) Act 2016</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

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

### 3 Authority

This instrument is made under section 9A of the *Parliamentary Entitlements Act 1990*.

### 4 Parliamentary injury compensation scheme

For section 9A of the Act, this instrument sets out the Parliamentary injury compensation scheme.

### 5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) benefit;
- (b) member;
- (c) Parliamentary office-holder.

In this instrument:

*Act* means the *Parliamentary Entitlements Act 1990*.

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**action for non-economic loss** means any action (whether or not it involves the formal institution of a proceeding):

- (a) to recover an amount for damages for non-economic loss sustained by a covered person as a result of an injury suffered by the covered person; and
- (b) that is taken by the covered person against the Commonwealth or another covered person; and
- (c) that follows an election made by the covered person under subsection 50(1).

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

**aggravation** includes acceleration or recurrence.

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

**approved Guide** has the same meaning as in the *Safety, Rehabilitation and Compensation Act 1988*.

Note: For the way the approved Guide applies in relation to the scheme, see section 40 of this instrument.

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

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

**claimant**, in relation to a time after the death of a claimant, means the claimant's legal personal representative.

**claim for compensation** means a claim under Part 5.

**Comcare** means the body corporate established by section 68 of the *Safety, Rehabilitation and Compensation Act 1988*.

**Commonwealth authority** has the same meaning as in the *Safety, Rehabilitation and Compensation Act 1988*.

**Commonwealth entity** means:

- (a) an Agency within the meaning of the *Public Service Act 1999*, that is not a Commonwealth authority; or
- (b) a Department within the meaning of the *Parliamentary Service Act 1999*.

**covered activities** means:

- (a) in relation to a member—the member's Parliamentary activities; or
- (b) in relation to the Prime Minister's spouse—the spouse's official activities as the Prime Minister's spouse.

**covered current member** means a member who is entitled to receive a Parliamentary allowance.



**covered former member** means a member who has ceased to be entitled to receive a Parliamentary allowance.

Note: In this instrument, a reference to a member includes a reference to a person who has ceased to be a member, but in relation to whom the Commonwealth has incurred a liability in accordance with this instrument (see section 6).

**covered person** means:

- (a) a member; or
- (b) the Prime Minister's spouse.

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

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

**dependant**, in relation to a deceased covered person, means:

- (a) the partner, parent, step-parent, father-in-law, mother-in-law, grandparent, child, stepchild, grandchild, sibling or half-sibling of the covered person; or
- (b) a person in relation to whom the covered person stood in the position of a parent or who stood in the position of a parent to the covered person;

so long as the person was wholly or partly dependent on the covered person at the date of the covered person's death.

Note: See also section 7 (family relationships).

**dependent** means dependent for economic support.

**disease** has the meaning given by section 9.

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

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

**incapacity for work** has the meaning given by section 13.

**injury** has the meaning given by section 8.

**licensed corporation** has the same meaning as in the *Safety, Rehabilitation and Compensation Act 1988*.

**loss**, in relation to property used by a covered person, includes the destruction of that property.

**medical treatment** has the same meaning as in the *Safety, Rehabilitation and Compensation Act 1988*, except that for the purposes of this instrument a reference to an employee in the definition of **medical treatment** in subsection 4(1) of that Act is taken to be a reference to a covered person.

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

**normal weekly earnings**, of a covered person, means the normal weekly earnings of the covered person calculated under section 15 or 16.

**normal weekly hours** means:

- (a) for a member—37.5 hours; or
- (b) otherwise—the average number of hours (including hours of overtime) worked in each week by the person in his or her employment during the relevant period (if any) in relation to the covered person as calculated for the purpose of applying the formula in subsection 16(2) or (3).

**overtime** includes:

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

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

**Parliamentary activities**, of a member, means activities engaged in by the member as a member, Parliamentary office-holder or Minister, at a time when the member is entitled to a Parliamentary allowance.

**Parliamentary allowance** means an allowance under the *Parliamentary Allowances Act 1952*.

**partner** means a spouse (within the ordinary meaning of the term), and includes:

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

**permanent** means likely to continue indefinitely.

**place of residence**, in relation to a covered person, means:

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

compared with the journey from his or her place of work to the place referred to in paragraph (a).

**prescribed child** means:

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

**prescribed person**, in relation to a covered person, means:

- (a) the partner of the covered person; or
- (b) any of the following who is 16 or over:
  - (i) the parent, step-parent, father-in-law, mother-in-law, grandparent, child, stepchild, grandchild, sibling or half-sibling of the covered person;
  - (ii) 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;
  - (iii) a person (other than the partner of the covered person or a person referred to in subparagraph (i) or (ii)) 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.

For the purposes of subparagraph (b)(iii), a person who has the care of a child referred to in that subparagraph must not be taken not to be wholly or mainly maintained by the covered person merely because the covered person pays remuneration to the person for caring for that child.

Note: See also section 7 (family relationships).

**principal officer**, in relation to a Commonwealth entity, means:

- (a) if the entity is an Agency within the meaning of the *Public Service Act 1999* that is not a Commonwealth authority—the Agency Head within the meaning of that Act; or
- (b) if the entity is a Department within the meaning of the *Parliamentary Service Act 1999*—the Secretary of the Department within the meaning of that Act.

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

**relevant allowance or salary**, in relation to a member, means any of the following to which the member is entitled:

- (a) parliamentary base salary within the meaning of Part II of the *Remuneration Tribunal Act 1973*;
- (b) additional Parliamentary office holder salary within the meaning of Part II of the *Remuneration Tribunal Act 1973*;
- (c) salary payable under section 66 of the Constitution.

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**relevant period**, in relation to a covered person who is the Prime Minister's spouse, means the period (if any) calculated under section 17 in relation to the covered person.

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

**scheme** means the Parliamentary injury compensation scheme.

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

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

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

**suitable employment**, in relation to a covered person who has suffered an injury in respect of which compensation is payable under the scheme, means any employment (including self-employment) in work for which the covered person is suited, having regard to the following:

- (a) the covered person's age, experience, training, language and other skills;
- (b) the covered person's suitability for rehabilitation or vocational retraining;
- (c) if employment is available in a place that would require the covered person to change his or her place of residence—whether it is reasonable to expect the covered person to change his or her place of residence;
- (d) any other relevant matter.

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

- (a) if the scheme is the scheme provided for by the *Parliamentary Contributory Superannuation Act 1948*:
  - (i) the amount of the pension or lump sum minus any part of that amount assessed by Comcare to be attributable to contributions made under the scheme by the covered person; or
  - (ii) if such an assessment cannot be made—the amount of the pension or lump sum; or
- (b) if the scheme is another superannuation scheme that identifies a part of the pension or lump sum as attributable to the contributions made under the scheme by the Commonwealth, Commonwealth authority or licensed corporation—the amount of that part; or
- (c) in any other case:
  - (i) the amount assessed by Comcare to be the part of the pension or lump sum that is attributable to the contributions made under the scheme by the Commonwealth, Commonwealth authority or licensed corporation; or

- (ii) if such an assessment cannot be made—the amount of the pension received by the covered person in respect of that week or the amount of the lump sum, as the case requires.

**superannuation scheme** means:

- (a) the superannuation scheme provided for by the *Parliamentary Contributory Superannuation Act 1948*; or
- (b) any superannuation scheme under which, or retirement savings account to which, the Commonwealth, a Commonwealth authority or a licensed corporation makes contributions on behalf of covered persons and includes a superannuation or provident scheme established or maintained by the Commonwealth, a Commonwealth authority or a licensed corporation.

## 6 References to members and the Prime Minister's spouse

- (1) A reference to a member (including a reference to a covered person who is a member) in a provision of this instrument that applies to a member at a time after the Commonwealth has incurred a liability in relation to the member in accordance with this instrument includes, unless the contrary intention appears, a reference to a person who has ceased to be a member.

Note: **Member** is defined in the Act as a member of either House of Parliament (see section 3 of the Act).

- (2) A reference to the Prime Minister's spouse (including a reference to a covered person who is the Prime Minister's spouse) in a provision of this instrument that applies to the Prime Minister's spouse at a time after the Commonwealth has incurred a liability in relation to the Prime Minister's spouse in accordance with this instrument includes, unless the contrary intention appears, a reference to a person who has been the Prime Minister's spouse.

## 7 Family relationships

- (1) For the purposes of this instrument, relationships (including the relationship of being family or being relatives) are taken to include (without limitation):
  - (a) relationships between de facto partners; and
  - (b) relationships of child and parent that arise:
    - (i) if someone is an ex-nuptial or adoptive child of a person; or
    - (ii) because of the definitions of **child** and **parent** in section 5; and
  - (c) relationships traced through relationships referred to in paragraphs (a) and (b).
- (2) For the purposes of this instrument, a person is to be taken to have been wholly or partly dependent on a covered person at the date of the covered person's death if the person would have been so dependent but for an incapacity of the covered person that resulted from an injury.
- (3) For the purposes of this instrument, a person who, immediately before the date of a covered person's death, lived with the covered person and was:
  - (a) the partner of the covered person; or
  - (b) a prescribed child of the covered person;

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is to be taken to be a person who was wholly dependent on the covered person at that date.

- (4) For the purposes of this instrument, other than subsection 26(5), a child of a deceased covered person who was born alive after the covered person's death is to be treated as if he or she had been born immediately before the covered person's death and was wholly dependent upon the covered person at the date of the covered person's death.
- (5) In ascertaining, for the purposes of this instrument, whether a child is or was dependent on a covered person, any amount of:
  - (a) family tax benefit calculated under Part 2 or 3 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* (an individual's Part A rate); and
  - (b) carer allowance under that Act; and
  - (c) double orphan pension under that Act;is not to be taken into account.

### 8 Definition of *injury*

- (1) In this instrument:

*injury* means:

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

but does not include a disease, injury or aggravation suffered as a result of any of the following:

- (d) a loss of, or failure to gain, selection as a candidate for election to the Parliament;
- (e) the loss of, or failure to gain, a position as a Minister (including a Parliamentary Secretary) or a Parliamentary office-holder;
- (f) the loss of, or failure to gain, a position in a political party;
- (g) the result of an election;
- (h) a decision relating to a benefit (including a decision made under this instrument).

- (2) For the purposes of paragraphs (a), (b) and (c) of the definition of *injury* in subsection (1), disregard any covered activities engaged in before 1 January 2016.

### 9 Definition of *disease*

- (1) In this instrument:

*disease* means:

- (a) an ailment suffered by a covered person; or

(b) an aggravation of such an ailment;  
that was contributed to, to a significant degree, by the person's covered activities.

- (2) In determining whether an ailment or aggravation suffered by a covered person was contributed to, to a significant degree, by the person's covered activities, the following matters may be taken into account:
- (a) the duration of the covered activities;
  - (b) the nature of, and particular tasks involved in, the covered activities;
  - (c) any predisposition of the person to the ailment or aggravation;
  - (d) any activities of the person not related to the covered activities;
  - (e) any other matters affecting the person's health.

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

- (3) For the purposes of this section, disregard any covered activities engaged in before 1 January 2016.

*Provisions relating to diseases*

- (4) For the purposes of this instrument, a covered person is taken to have suffered a disease, or an aggravation of a disease, on the day when:
- (a) the covered person first sought medical treatment for the disease or aggravation; or
  - (b) the disease or aggravation resulted in the death of the covered person or first resulted in the incapacity for work, or impairment of the covered person;

whichever happens first.

- (5) For the purposes of this instrument, the death of a covered person is taken to have resulted from a disease or an aggravation of a disease if, apart from that disease or aggravation, as the case may be, the death of the covered person would have occurred at a significantly later time.
- (6) For the purposes of this instrument, an incapacity for work or impairment of a covered person is taken to have resulted from a disease, or an aggravation of a disease, if, but for that disease or aggravation, as the case may be:
- (a) the incapacity or impairment would not have occurred; or
  - (b) the incapacity would have commenced, or the impairment would have occurred, at a significantly later time; or
  - (c) the extent of the incapacity or impairment would have been significantly less.

## **10 Injury arising out of or in the course of covered activities**

- (1) Without limiting the circumstances in which an injury to a covered person may be treated as having arisen out of, or in the course of, the person's covered activities, an injury is to be treated as having so arisen, for the purposes of this instrument, if it was sustained:
- (a) as a result of an act of violence that would not have occurred but for:
    - (i) the person's position as a member or the Prime Minister's spouse (as the case may be); or

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- (ii) the person's covered activities; or
  - (b) while the person was at a place for the purpose of:
    - (i) obtaining a medical certificate for the purposes of the scheme; or
    - (ii) receiving medical treatment for an injury; or
    - (iii) undergoing a medical examination in accordance with a requirement made under the scheme, or an assessment under section 63 of the covered person's capability of returning to work in suitable employment; or
    - (iv) being provided with services, facilities or equipment in accordance with section 47; or
  - (c) while the person was travelling to or from a place for the purpose of:
    - (i) obtaining a medical certificate for the purposes of the scheme; or
    - (ii) receiving medical treatment for an injury; or
    - (iii) undergoing a medical examination in accordance with a requirement made under the scheme, or an assessment under section 63 of the covered person's capability of returning to work in suitable employment; or
    - (iv) being provided with services, facilities or equipment in accordance with section 47; or
  - (d) while the person was travelling to or from a place for the purpose of engaging in covered activities.
- (2) Subsection (1) does not apply if a covered person is injured because he or she voluntarily and unreasonably submitted to an abnormal risk of injury.

### **11 Injuries suffered by covered persons**

A reference in this instrument to an injury suffered by a covered person is, unless the contrary intention appears, a reference to an injury suffered by the covered person for which compensation is payable under this instrument.

### **12 Injuries etc. resulting from medical treatment**

For the purposes of this instrument, a physical or mental injury or ailment suffered by a covered person as a result of medical treatment of an injury is to be taken to be an injury if, and only if:

- (a) compensation is payable in accordance with this instrument in respect of the injury for which the medical treatment was obtained; and
- (b) it was reasonable for the covered person to have obtained that medical treatment in the circumstances.

### **13 Incapacity for work**

A reference in this instrument to an incapacity for work is a reference to an incapacity suffered by a covered person as a result of an injury, where the incapacity is:

- (a) if the covered person is a covered current member—an incapacity that results in a reduction in a relevant allowance or salary in relation to the member; or



- (b) otherwise:
  - (i) an incapacity to engage in any work; or
  - (ii) an incapacity to engage in work at the same level at which the covered person was engaged immediately before the injury happened.

#### **14 Serious and wilful misconduct**

- (1) For the purposes of this instrument, a covered person who is under the influence of alcohol or a drug is taken to have engaged in serious and wilful misconduct.
- (2) Subsection (1) does not apply to a drug:
  - (a) prescribed for the covered person by a legally qualified medical practitioner or a legally qualified dentist; and
  - (b) used by the covered person in accordance with that prescription.

#### **15 Normal weekly earnings—members**

- (1) For the purposes of this instrument, the normal weekly earnings before an injury of a covered person who is a member are the total amount of relevant allowance or salary which the covered person is entitled to receive in respect of a week:
  - (a) if the covered person is entitled to a Parliamentary allowance immediately before the injury—as at immediately before the injury; or
  - (b) otherwise—as at the last time before the injury at which the covered person was entitled to a Parliamentary allowance.
- (2) The normal weekly earnings of a covered person before the covered person's injury, as referred to in subsection (1), must, while the covered person is entitled to a Parliamentary allowance, be increased or reduced by any increases or reductions in any amount of relevant allowance or salary used to work out the normal weekly earnings of the covered person before the covered person's injury.
 

Note: For example, if a new determination takes effect under subsection 7(1) of the *Remuneration Tribunal Act 1973* in relation to an amount that is a relevant allowance or salary referred to in subsection (1) of this section, the normal weekly earnings of the covered person before the injury must be increased or decreased in accordance with any increase or decrease in the amount in the new determination.
- (3) After the covered person ceases to be entitled to a Parliamentary allowance, the normal weekly earnings of the covered person before the injury, as worked out under subsection (1) and increased or reduced under subsection (2), must be further increased, with effect from each 1 July after the cessation:
  - (a) by reference to the percentage of increase (if any) in the index that is prescribed by regulations in force for the purposes of subsection 8(9B) of the *Safety, Rehabilitation and Compensation Act 1988* over the year ending on the 31 December preceding the 1 July; and
  - (b) in accordance with any manner specified by regulations in force for the purposes of subsection 8(9D) of that Act.
- (4) If the amount of the covered person's normal weekly earnings before an injury, as calculated under the preceding subsections, would exceed:

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- (a) if the covered person is a covered current member—the amount per week of the earnings that the covered current member would receive if he or she were not incapacitated for work; or
  - (b) if the covered person has ceased to be a covered current member—whichever is the greater of the following amounts:
    - (i) the amount per week of the earnings that the covered person would receive if he or she had continued to be a current covered member at the date of the injury;
    - (ii) the amount per week of the earnings that the covered person would receive if he or she had continued to be a current covered member at the date on which they ceased to be a current covered member;
- the amount so calculated must be reduced by the amount of the excess.

### 16 Normal weekly earnings—Prime Minister's spouse

- (1) For the purposes of this instrument, the normal weekly earnings before an injury of a covered person who is the Prime Minister's spouse are:
  - (a) if there is a relevant period in relation to the covered person—the amount calculated under subsection (2), subject to subsections (3) to (6); or
  - (b) if there is no relevant period in relation to the covered person—nil.

Note: See section 17 (relevant period—Prime Minister's spouse).

- (2) For the purposes of paragraph (1)(a), the amount is to be calculated using the formula:

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

where:

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

**NH** is the average number of hours worked in each week by the covered person in his or her employment during the relevant period.

**RP** is the covered person's average hourly ordinary time rate of pay during that period.

- (3) If the covered person is required to work overtime on a regular basis, the normal weekly earnings of the covered person before an injury are the amount calculated in accordance with subsection (2) plus an additional amount calculated in relation to the relevant period using the formula:

$$NH \times OR$$

where:

**NH** is the average number of hours of overtime worked in each week by the covered person in his or her employment during the relevant period.

**OR** is the covered person's average hourly overtime rate of pay during that period.

- (4) If, because of the shortness of the relevant period, the normal weekly earnings as calculated in relation to the relevant period under subsection (2) or (3) 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, the normal weekly earnings before the date of the injury 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 at which the covered person was being so paid.
- (5) The normal weekly earnings of the covered person before the injury, as worked out under subsections (2) to (4), must be further increased, with effect from each 1 July after the injury:
  - (a) by reference to the percentage of increase (if any) in the index that is prescribed by regulations in force for the purposes of subsection 8(9B) of the *Safety, Rehabilitation and Compensation Act 1988* over the year ending on the 31 December preceding the 1 July; and
  - (b) in accordance with any manner specified by regulations in force for the purposes of subsection 8(9D) of that Act.
- (6) If the amount of the covered person's normal weekly earnings before an injury, as calculated under the preceding subsections, would exceed:
  - (a) if the covered person continues to be employed in the employment in which he or she was engaged in before the injury—the amount per week of the earnings that the covered person would receive if he or she were not incapacitated for work; or
  - (b) if the covered person has ceased to be employed—whichever is the greater of the following amounts:
    - (i) the amount per week of the earnings that the covered person would receive if he or she had continued to be employed in the employment in which he or she was engaged at the date of the injury;
    - (ii) the amount per week of the earnings that the covered person would receive if he or she had continued to be employed in the employment in which he or she was engaged at the date on which the employment ceased;

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

### **17 Relevant period—Prime Minister's spouse**

- (1) For the purposes of calculating the normal weekly earnings before an injury of a covered person who is the Prime Minister's spouse, a reference in section 16 to the relevant period in relation to the covered person is, subject to this section, a reference to the latest period (if any) of 2 weeks, before the date of the injury, during which both of the following applied:
  - (a) the covered person was continuously employed;
  - (b) the covered person was the Prime Minister's spouse (disregarding section 6).

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- (2) If there is no period of 2 weeks, before the date of the injury, during which both of paragraphs (1)(a) and (b) applied, there is no relevant period in relation to the covered person.
- (3) Subject to subsection (4), if, during the period referred to in subsection (1), the minimum amount per week payable to the covered person in respect of his or her employment was varied as a result of:
- (a) the operation of a law of the Commonwealth or of a State or Territory; or
  - (b) the making, alteration or operation of an award, order, determination or industrial agreement, or the doing of any other act or thing, under such a law;
- any part of that period that occurred before the variation, or last variation, took place must be disregarded for the purposes of calculating the relevant period.
- (4) If in any case the application of subsection (3) would require that a period be disregarded for the purposes of calculating the relevant period in relation to the covered person, and as a result of disregarding that period:
- (a) it would be impracticable to calculate under section 16 the normal weekly earnings of the covered person before an injury; or
  - (b) the normal weekly earnings as so calculated 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;
- subsection (3) does not apply in that case, but the normal weekly earnings of the covered person during that period are taken to be the amount that would have been his or her normal weekly earnings during that period if the variation had taken effect at the beginning of that period.
- (5) If, during any part of the period calculated under the preceding subsections (other than subsection (2)), the covered person's earnings were reduced, or the covered person did not receive any earnings, because of absence from his or her employment for any reason, that part of that period must be disregarded for the purposes of calculating the relevant period.

### **18 Recovery of damages**

For the purposes of this instrument, 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, when the amount of the damages was paid to, or for the benefit of, the covered person or dependant, as the case may be.

### **19 Liability of the Commonwealth**

The liability of the Commonwealth to pay compensation to a person under this instrument is the liability of the Commonwealth to pay to the person such amount or amounts as are determined by Comcare to be payable to the person under this instrument.

### **20 Amounts of compensation**

An amount of compensation payable under a provision of this instrument in respect of an injury is, unless the contrary intention appears, in addition to an

amount of compensation paid or payable under any other provision of this instrument in respect of that injury.

## 21 Indexation—Consumer Price Index

- (1) In this section:

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

***relevant amount*** means the amount specified in subsection 27(2), 29(13), (14) or (15), 30(12), (13) or (14), 36(10), 39(2), 41(1) or (3) or 43(1).

***relevant year*** means:

- (a) the financial year starting on 1 July 2016; or
- (b) a later financial year.

### *Indexation*

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

### *Indexation factor*

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

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

where:

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

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

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

### *Other provisions*

- (5) Subject to subsection (6), if at any time (whether before or after the commencement of this section) the Australian Statistician has published or

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publishes an index number for a quarter in substitution for an index number previously published for that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

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

### 22 Indexation—Wage Price Index

- (1) In this section:

**index number**, in relation to a quarter, means the Wage Price Index (total hourly rates of pay excluding bonuses/all sectors/all Australia/original) number published by the Australian Statistician in respect of that quarter.

**relevant amount** means the amount specified in subsection 26(3), (4) or (5).

**relevant year** means:

- (a) the financial year starting on 1 July 2016; or
- (b) a later financial year.

*Indexation*

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

*Indexation factor*

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

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

where:

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

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

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

*Other provisions*

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

## **Part 2—Compensation**

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

#### **23 Compensation for injuries**

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

#### **24 Compensation for loss of or damage to property used by covered person**

- (1) If:
  - (a) a covered person has an accident arising out of, and in the course of, his or her covered activities; and
  - (b) the accident does not cause injury to the covered person but results in the loss of, or damage to, property used by the covered person;the Commonwealth is liable to pay compensation to the covered person of an amount equal to the amount of the expenditure reasonably incurred by the covered person in the necessary replacement or repair of the property.
- (2) For the purposes of subsection (1), expenditure incurred by a covered person in the necessary replacement or repair of property used by the covered person is taken to include any fees or charges paid or payable by the covered person to a legally qualified medical practitioner or dentist or other qualified person for a consultation, examination, prescription or other service reasonably rendered in connection with the replacement or repair.
- (3) Compensation is not payable under this section if the loss or damage is attributable to the serious and wilful misconduct of the covered person.
- (4) For the purposes of subsection (1), disregard any covered activities engaged in before 1 January 2016.

#### **25 Compensation for medical and related expenses**

- (1) If a covered person:
  - (a) suffers an injury; and
  - (b) obtains medical treatment for the injury, so long as the treatment was reasonable for the person to obtain in the circumstances;the Commonwealth is liable to pay compensation for the cost of the medical treatment, of such amount as Comcare determines is appropriate.



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- (2) Subsection (1) applies whether or not the injury results in death, incapacity for work, or impairment.
- (3) For the purposes of subsection (1), the cost of medical treatment involving the supply, replacement or repair of property used by a covered person, is taken to include any fees or charges paid or payable by the covered person to:
- (a) a legally qualified medical practitioner; or
  - (b) a legally qualified dentist; or
  - (c) any other qualified person;
- for a consultation, examination, prescription, or other service, reasonably required in connection with that supply, replacement or repair.
- (4) An amount of compensation under subsection (1) is payable:
- (a) if the covered person has paid the cost of the medical treatment—to, or in accordance with the directions of, the covered person; or
  - (b) if the covered person dies before the compensation is paid and without having paid the cost referred to in subsection (1) and another person, who is not the legal personal representative of the covered person, has paid that cost—to that other person; or
  - (c) in any other case—to the person to whom the cost is payable.
- (5) If a person is liable to pay any cost referred to in subsection (1), any amount paid under subsection (4) to the person to whom that cost is payable is, to the extent of the payment, a discharge of the liability of the first-mentioned person.
- (6) Subject to subsection (8), if:
- (a) compensation in respect of the cost of medical treatment is payable under subsection (1); and
  - (b) the covered person reasonably incurs expenditure in doing either or both of the following:
    - (i) making a necessary journey for the purpose of obtaining that medical treatment;
    - (ii) remaining, for the purpose of obtaining that medical treatment, at a place to which the covered person has made a journey for that purpose;
- the Commonwealth is liable to pay compensation to the covered person:
- (c) in respect of the journey—of an amount worked out using the formula set out in subsection (7); or
  - (d) in respect of the covered person remaining for the purpose of obtaining the treatment—of an amount equal to the expenditure so reasonably incurred in remaining for that purpose.
- (7) The formula referred to in paragraph (6)(c) is:

Specified rate per kilometre × Number of kilometres travelled

where:

***number of kilometres travelled*** means the number of whole kilometres Comcare determines to have been the reasonable length of such a journey as it was necessary for the covered person to make (including the return part of the

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

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journey), not including any part of the journey in relation to which transportation was provided, or paid for, by the Commonwealth.

*specified rate per kilometre* means the rate per kilometre specified for the purposes of the definition of *specified rate per kilometre* in paragraph 16(6)(c) of the *Safety, Rehabilitation and Compensation Act 1988*.

- (8) Compensation is not payable under subsection (6) unless:
- (a) the reasonable length of such a journey as it was necessary for the covered person to make (including the return part of the journey) exceeded 50 kilometres; or
  - (b) if the journey made by the covered person involved the use of public transport or ambulance services—the covered person’s injury reasonably required the use of such transport or services regardless of the distance involved.
- (9) The matters to which Comcare must have regard in deciding questions arising under subsections (6) and (8) include:
- (a) the place or places where appropriate medical treatment was available to the covered person; and
  - (b) the means of transport available to the covered person for the journey; and
  - (c) the route or routes by which the covered person could have travelled; and
  - (d) the accommodation available to the covered person.
- (10) If:
- (a) a covered person suffers an injury; and
  - (b) a person has reasonably incurred expenditure in connection with:
    - (i) the transportation of the covered person from the place where the injury was sustained to a hospital or similar place; or
    - (ii) if the covered person has died—the transportation of the covered person’s body from the place where the injury was sustained to a hospital or similar place, or to a mortuary; and
  - (c) the covered person, or the legal personal representative of the covered person, does not make a claim for compensation in respect of that expenditure;

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

## **Division 2—Injuries resulting in death**

### **26 Compensation for injuries resulting in death**

- (1) This section applies if an injury to a covered person results in the covered person's death.
- (2) Subject to this section and sections 25 and 27, if the covered person dies without leaving dependants, compensation is not payable in respect of the injury.
- (3) Subject to this section and to sections 25 and 27, if the covered person dies leaving dependants some or all of whom were, at the date of the covered person's death, wholly dependent on the covered person:
  - (a) the Commonwealth is liable to pay compensation in respect of the injury of \$517,564.84; and
  - (b) that compensation is payable to, or in accordance with the directions of, Comcare for the benefit of all of those dependants.
- (4) If the covered person dies without leaving dependants who were wholly dependent on the covered person at the date of the covered person's death but leaving dependants who were partly dependent on the covered person at that date:
  - (a) subject to this section and to sections 25 and 27, the Commonwealth is liable to pay compensation in respect of the injury of such amount, not exceeding \$517,564.84, as Comcare determines, having regard to any losses suffered by those dependants as a result of the cessation of the covered person's earnings; and
  - (b) that compensation is payable to, or in accordance with the directions of, Comcare for the benefit of all of those dependants.
- (5) If:
  - (a) a prescribed child was, at the date of the injury or at the date of the covered person's death, wholly or mainly dependent on the covered person; or
  - (b) a prescribed child, who is a child of the covered person, was born after the covered person's death; or
  - (c) a prescribed child would, if the covered person had not died, have been wholly or mainly dependent on the covered person;the Commonwealth is liable to pay compensation at the rate of \$142.33 a week and that compensation is payable to, or in accordance with the directions of, Comcare for the benefit of that child from the date of the covered person's death or the date of the birth of the child, whichever is the later.
- (6) Compensation is not payable under subsection (5) in respect of:
  - (a) any period during which the child is not a prescribed child; and
  - (b) in the case of a child referred to in paragraph (5)(c)—any period during which, if the covered person had not died, the child would not have been wholly or mainly dependent on the covered person.
- (7) An amount of compensation paid or payable under this instrument before the death of a covered person:

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- (a) is not affected by subsection (2); and
  - (b) must not be deducted from the compensation payable under subsection (3); and
  - (c) must not be taken into account in determining the compensation payable under subsection (4).
- (8) If an amount of compensation is payable under this section for the benefit of 2 or more dependants of the deceased covered person, Comcare must determine the shares of those dependants in that amount as Comcare thinks fit, having regard to any losses suffered by those dependants as a result of the cessation of the covered person's earnings.
- (9) A reference in this section to a dependant of a deceased covered person is a reference to a dependant by or on behalf of whom a claim is made for compensation under this section.
- (10) If claims for compensation under this section are made by or on behalf of 2 or more dependants of a deceased covered person, Comcare must make one determination in respect of those claims.

**27 Compensation in respect of funeral expenses**

- (1) If an injury to a covered person results in death, the Commonwealth is liable to pay compensation in respect of the cost of the covered person's funeral to the person who paid the cost of the funeral or, if that cost has not been paid, to the person who carried out the funeral.
- (2) The amount of compensation is the amount, not exceeding \$11,459.25, that Comcare considers reasonable, having regard to:
- (a) the charges ordinarily made for funerals in the place where the funeral was carried out; and
  - (b) any amount paid or payable in respect of the cost of the funeral under any other law of the Commonwealth.

Note: The amount of \$11,459.25 is indexed under section 21.

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

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## Division 3—Injuries resulting in incapacity for work

### 28 Compensation for injuries resulting in incapacity—covered current members

- (1) This section applies to a covered person who is:
  - (a) a covered current member; and
  - (b) incapacitated for work as a result of an injury;other than a covered person to whom section 31, 32, 33 or 34 applies.
- (2) Subject to this Part, the Commonwealth is liable to pay to the covered person in respect of the injury, for each week that is a maximum rate compensation week during which the covered person is incapacitated, an amount of compensation worked out using the formula:  
$$NWE - AE$$
where:  
*AE* is the total amount of relevant allowance or salary to which the covered person is entitled in relation to the week.  
*NWE* is the amount of the covered person's normal weekly earnings.
- (3) For the purposes of subsection (2), a week is a **maximum rate compensation week**, in relation to a covered person to whom this section applies, if:
  - (a) it is a week during which the covered person suffers a reduction in a relevant allowance or salary as a result of the incapacity; and
  - (b) it is not a reduced rate compensation week.
- (4) If the payment of an amount to the covered person under subsection (2) in respect of a week would result in the total amount paid to the covered person under subsection (2) in relation to the injury exceeding 45 times the covered person's normal weekly earnings by an amount (the **excess amount**), then that week and each later week during which the covered person suffers a reduction in a relevant allowance or salary as a result of the incapacity is, for the purposes of this section, a **reduced rate compensation week** in relation to the covered person and the incapacity.
- (5) Subject to this Part, the Commonwealth is liable to pay compensation to the covered person, in respect of the injury, for each reduced rate compensation week during which the covered person is incapacitated, an amount calculated using the formula in subsection (2) with:
  - (a) for the first reduced rate compensation week—the reduction (if any) required by subsection (6); or
  - (b) for each later reduced rate compensation week—the reductions (if any) required by subsections (7) and (8).
- (6) For the first reduced rate compensation week, the amount payable under subsection (5) must be reduced by the amount worked out using the formula:

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

where:

**maximum rate compensation amount** means the amount that would be payable in respect of the week if it were a maximum rate compensation week in relation to the covered person.

**total reductions** means the total amount (which may be nil) by which the amount of compensation payable under subsection (5) in respect of the week would be reduced under subsections (7) and (8) if this subsection did not apply in relation to the week.

- (7) If, as a result of the incapacity, a pension under a superannuation scheme is payable to the covered person in respect of a week during which he or she is incapacitated, the amount payable under subsection (5) must be reduced by the amount of the pension.
- (8) If an amount of compensation payable under subsection (5) exceeds 150% of the amount called the *Average Weekly Ordinary Time Earnings of Full-time Adults*, as published from time to time by the Australian Statistician, the amount of compensation must be reduced by an amount equal to the excess.
- (9) For the purposes of this section, if a covered person ceases to be a covered current member during a week referred to in subsection (3) or (5):
  - (a) the covered person is taken to be a covered current member for the whole of the week; and
  - (b) the covered person is taken to be entitled, in relation to that week, to the amount of relevant allowance or salary to which he or she would have been entitled if he or she had not ceased to be a covered current member.

**29 Compensation for injuries resulting in incapacity—covered former members**

- (1) This section applies to a covered person who is:
  - (a) a covered former member; and
  - (b) incapacitated for work as a result of an injury;other than a covered person to whom section 31, 32, 33 or 34 applies.
- (2) Subject to this Part, the Commonwealth is liable to pay to the covered person in respect of the injury, for each week:
  - (a) that is a maximum rate compensation week; and
  - (b) to which section 28 does not apply in relation to the person; and
  - (c) during which the covered person is incapacitated;an amount of compensation worked out using the formula:

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

where:

**AE** is the greater of the following amounts:

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

*NWE* is the amount of the covered person's normal weekly earnings.

- (3) For the purposes of subsection (2), a week is a **maximum rate compensation week**, in relation to a covered person to whom this section applies, if:
  - (a) it is a week during which the covered person's incapacity prevents the covered person working the covered person's normal weekly hours because the covered person is unable to work or unable to work at the level at which the covered person worked before the injury; and
  - (b) the total of the following hours does not exceed 45 times the covered person's normal weekly hours:
    - (i) the hours that the covered person has been prevented from working, or working at the level referred to in paragraph (a), during that incapacity, in that week and in all previous weeks, if any, to which that paragraph applies;
    - (ii) if any previous week was a maximum rate compensation week for the purposes of subsection 28(2) in relation to the covered person and the incapacity—the number of hours worked out using the formula in subsection (4) of this section.
- (4) For subparagraph (3)(b)(ii), the formula is as follows:

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

where:

**notional hourly rate** means the total amount of relevant allowance or salary which the covered person was, immediately before the covered person ceased to be a covered current member, entitled to receive in respect of a week divided by 37.5.

**section 28 compensation** means the amount of compensation (if any) that the Commonwealth has paid, or is liable to pay, to the covered person under section 28 in respect of the injury.

- (5) If, before the end of a particular week, the total of the hours referred to in subparagraphs (3)(b)(i) and (ii) will exceed 45 times the covered person's normal weekly hours:
  - (a) subsection (2) applies in respect of the part of the week before that total number of hours is exceeded in accordance with subsection (6); and
  - (b) subsection (8) applies in respect of the remainder of the week in accordance with subsection (7).
- (6) For the purposes of paragraph (5)(a), the compensation payable in respect of the part of the week to which that paragraph refers is an amount worked out using the formula:

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

where:

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

*NWE* is the amount of the covered person's normal weekly earnings.

*NWH* means the covered person's normal weekly hours.

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

- (a) that would have counted towards the covered person's normal weekly hours (whether those hours are worked or not); and
- (b) that elapse before the total of the hours referred to in subparagraphs (3)(b)(i) and (ii) exceeds 45 times the covered person's normal weekly hours.

- (7) For the purposes of paragraph (5)(b), the compensation payable in respect of the part of the week to which that paragraph refers is an amount worked out using the formula:

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

where:

*NWH* means the covered person's normal weekly hours.

*reduced rate compensation entitlement* is the rate of compensation that would have been applicable for the whole week had subsection (8) applied throughout the whole week.

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

- (a) that would have counted towards the covered person's normal weekly hours (whether those hours are worked or not); and
- (b) that elapse before the total of the hours referred to in subparagraphs (3)(b)(i) and (ii) exceeds 45 times the covered person's normal weekly hours.

- (8) Subject to this Part, the Commonwealth is liable to pay compensation to the covered person, in respect of the injury, for each week during which the covered person is incapacitated, other than a week referred to in subsection (2), of an amount calculated using the formula:

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

where:

*adjustment percentage* is a percentage equal to:

- (a) if the covered person is not employed during that week—75%; or
- (b) if the covered person is employed for 25% or less of his or her normal weekly hours during that week—80%; or



- (c) if the covered person is employed for more than 25% but not more than 50% of his or her normal weekly hours during that week—85%; or
- (d) if the covered person is employed for more than 50% but not more than 75% of his or her normal weekly hours during that week—90%; or
- (e) if the covered person is employed for more than 75% but less than 100% of his or her normal weekly hours during that week—95%; or
- (f) if the covered person is employed for 100% of his or her normal weekly hours during that week—100%.

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

*NWE* is the amount of the covered person's normal weekly earnings.

- (9) If, as a result of the incapacity:
  - (a) the amount per week payable to the covered person in respect of his or her continued employment is reduced; and
  - (b) a pension under a superannuation scheme is payable to the covered person;subsection (8) applies in relation to the covered person in relation to a week during which the covered person is incapacitated as if the references in the subsection to the amount he or she was able to earn during the week in suitable employment were instead references to the sum of that amount and any amount of the pension referred to in paragraph (b) that is payable to the covered person in respect of that week.
- (10) In determining, for the purposes of this section, the amount per week that a covered person is able to earn in suitable employment, Comcare must have regard to the following:
  - (a) if the covered person is in employment (including self-employment)—the amount per week that the covered person is earning in that employment;
  - (b) if, after becoming incapacitated for work, the covered person received an offer of suitable employment and failed to accept that offer—the amount per week that the covered person would be earning in that employment if he or she were engaged in that employment;
  - (c) if, after becoming incapacitated for work, the covered person received an offer of suitable employment and, having accepted that offer, failed to engage, or to continue to engage, in that employment—the amount per week that the covered person would be earning in that employment if he or she were engaged in that employment;
  - (d) if, after becoming incapacitated for work, the covered person received an offer of suitable employment on condition that the covered person completed a reasonable rehabilitation or vocational retraining program and the covered person failed to fulfil that condition—the amount that the covered person would be earning in that employment if he or she were engaged in that employment;
  - (e) if, after becoming incapacitated for work, the covered person has failed to seek suitable employment—the amount per week that, having regard to the state of the labour-market at the relevant time, the covered person could reasonably be expected to earn in such employment if he or she were engaged in such employment;

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- (f) if paragraph (b), (c), (d) or (e) applies to the covered person—whether the covered person’s failure to accept an offer of employment, to engage, or to continue to engage, in employment, to undertake, or to complete, a rehabilitation or vocational retraining program or to seek employment, as the case may be, was, in Comcare’s opinion, reasonable in all the circumstances;
  - (g) 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;
  - (h) any other matter that Comcare considers relevant.
- (11) If an amount of compensation calculated under subsection (8) exceeds 150% of the amount called the *Average Weekly Ordinary Time Earnings of Full-time Adults*, as published from time to time by the Australian Statistician, the amount so calculated must be reduced by an amount equal to the excess.
- (12) If an amount of compensation calculated under subsection (8) for a week during which the covered person is not employed is less than the minimum earnings of the covered person, the amount so calculated must be increased by an amount equal to the difference between that amount and the minimum earnings.
- (13) For the purposes of subsection (12), the minimum earnings of a covered person are taken to be:
- (a) \$454.44, or, if subsection (14) or (15) applies in relation to the covered person, the sum of \$454.44 and the amount or amounts required to be added under whichever of those subsections applies; or
  - (b) an amount equal to 90% of the covered person’s normal weekly earnings; whichever is less.
- (14) If there are prescribed persons wholly or mainly dependent on the covered person, there must be added to the amount of \$454.44 specified in paragraph (13)(a) the amount of \$112.53.
- (15) If there are prescribed children (whether born before, on or after the date of the injury) wholly or mainly dependent on the covered person, there must be added to the amount of \$454.44 specified in paragraph (13)(a) the amount of \$56.22 for each of those children, but an amount must not be so added for a child in relation to any period before the date of birth of that child.
- (16) If a prescribed child is:
- (a) a prescribed person in relation to the covered person; and
  - (b) the only prescribed person who is wholly or mainly dependent on the covered person;
- subsection (15) does not apply in relation to that child.
- (17) If 2 or more prescribed children are each:
- (a) a prescribed person in relation to the covered person; and
  - (b) wholly or mainly dependent on the covered person;
- subsection (14) applies in relation to one of those children and subsection (15) applies in relation to the remainder of those children.

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**30 Compensation for injuries resulting in incapacity—Prime Minister’s spouse**

- (1) This section applies to a covered person:
- (a) who is incapacitated for work as a result of an injury; and
  - (b) who is the Prime Minister’s spouse; and
  - (c) whose normal weekly earnings are not nil;
- other than a covered person to whom section 31, 32, 33 or 34 applies.
- (2) Subject to this Part, the Commonwealth is liable to pay to the covered person in respect of the injury, for each week that is a maximum rate compensation week during which the covered person is incapacitated, an amount of compensation worked out using the formula:

$NWE - AE$

where:

*AE* is the greater of the following amounts:

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

*NWE* is the amount of the covered person’s normal weekly earnings.

- (3) For the purposes of subsection (2), a week is a **maximum rate compensation week**, in relation to a covered person to whom this section applies, if:
- (a) it is a week during which the covered person’s incapacity prevents the covered person working the covered person’s normal weekly hours because the covered person is unable to work or unable to work at the level at which the covered person worked before the injury; and
  - (b) the total number of hours that the covered person has been prevented from working, or working at that level, during that incapacity, in that week and in all previous weeks, if any, to which paragraph (a) applies, does not exceed 45 times the covered person’s normal weekly hours.
- (4) If, before the end of a particular week, the total of the hours that the covered person has been prevented from working, or working at the level at which the covered person worked before the injury, in that week and in previous weeks, will exceed 45 times the covered person’s normal weekly hours:
- (a) subsection (2) applies in respect of the part of the week before that total number of hours is exceeded in accordance with subsection (5); and
  - (b) subsection (7) applies in respect of the remainder of the week in accordance with subsection (6).
- (5) For the purposes of paragraph (4)(a), the compensation payable in respect of the part of the week to which that paragraph refers is an amount worked out using the formula:

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

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where:

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

*NWE* is the amount of the covered person's normal weekly earnings.

*NWH* means the covered person's normal weekly hours.

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

- (a) that would have counted towards the covered person's normal weekly hours (whether those hours are worked or not); and
  - (b) that elapse before the total of the hours that the covered person has been prevented from working, or working at the level at which the covered person worked before the injury, in that week and in previous weeks, exceeds 45 times the covered person's normal weekly hours.
- (6) For the purposes of paragraph (4)(b), the compensation payable in respect of the part of the week to which that paragraph refers is an amount worked out using the formula:

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

where:

*NWH* means the covered person's normal weekly hours.

**reduced rate compensation entitlement** is the rate of compensation that would have been applicable for the whole week had subsection (7) applied throughout the whole week.

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

- (a) that would have counted towards the covered person's normal weekly hours (whether those hours are worked or not); and
  - (b) that elapse before the total of the hours that the covered person has been prevented from working, or working at the level at which the covered person worked before the injury, in that week and in previous weeks, exceeds 45 times the covered person's normal weekly hours.
- (7) Subject to this Part, the Commonwealth is liable to pay compensation to the covered person, in respect of the injury, for each week during which the covered person is incapacitated, other than a week referred to in subsection (2), of an amount calculated using the formula:

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

where:

**adjustment percentage** is a percentage equal to:

- (a) if the covered person is not employed during that week—75%; or
- (b) if the covered person is employed for 25% or less of his or her normal weekly hours during that week—80%; or

- (c) if the covered person is employed for more than 25% but not more than 50% of his or her normal weekly hours during that week—85%; or
- (d) if the covered person is employed for more than 50% but not more than 75% of his or her normal weekly hours during that week—90%; or
- (e) if the covered person is employed for more than 75% but less than 100% of his or her normal weekly hours during that week—95%; or
- (f) if the covered person is employed for 100% of his or her normal weekly hours during that week—100%.

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

*NWE* is the amount of the covered person's normal weekly earnings.

- (8) If, as a result of the incapacity:
  - (a) the amount per week payable to the covered person in respect of his or her continued employment is reduced; and
  - (b) a pension under a superannuation scheme is payable to the covered person;subsection (7) applies in relation to the covered person in relation to a week during which the covered person is incapacitated as if the references in that subsection to the amount he or she was able to earn during the week in suitable employment were instead references to the sum of that amount and any amount of the pension referred to in paragraph (b) of this subsection that is payable to the covered person in respect of that week.
- (9) In determining, for the purposes of subsections (2) and (7), the amount per week that a covered person is able to earn in suitable employment, Comcare must have regard to the following:
  - (a) if the covered person is in employment (including self-employment)—the amount per week that the covered person is earning in that employment;
  - (b) if, after becoming incapacitated for work, the covered person received an offer of suitable employment and failed to accept that offer—the amount per week that the covered person would be earning in that employment if he or she were engaged in that employment;
  - (c) if, after becoming incapacitated for work, the covered person received an offer of suitable employment and, having accepted that offer, failed to engage, or to continue to engage, in that employment—the amount per week that the covered person would be earning in that employment if he or she were engaged in that employment;
  - (d) if, after becoming incapacitated for work, the covered person received an offer of suitable employment on condition that the covered person completed a reasonable rehabilitation or vocational retraining program and the covered person failed to fulfil that condition—the amount that the covered person would be earning in that employment if he or she were engaged in that employment;
  - (e) if, after becoming incapacitated for work, the covered person has failed to seek suitable employment—the amount per week that, having regard to the state of the labour-market at the relevant time, the covered person could reasonably be expected to earn in such employment if he or she were engaged in such employment;

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- (f) if paragraph (b), (c), (d) or (e) applies to the covered person—whether the covered person’s failure to accept an offer of employment, to engage, or to continue to engage, in employment, to undertake, or to complete, a rehabilitation or vocational retraining program or to seek employment, as the case may be, was, in Comcare’s opinion, reasonable in all the circumstances;
  - (g) 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;
  - (h) any other matter that Comcare considers relevant.
- (10) If an amount of compensation calculated under subsection (7) exceeds 150% of the amount called the *Average Weekly Ordinary Time Earnings of Full-time Adults*, as published from time to time by the Australian Statistician, the amount so calculated must be reduced by an amount equal to the excess.
- (11) If an amount of compensation calculated under subsection (7) for a week during which the covered person is not employed is less than the minimum earnings of the covered person, the amount so calculated must be increased by an amount equal to the difference between that amount and the minimum earnings.
- (12) For the purposes of subsection (11), the minimum earnings of a covered person are taken to be:
- (a) \$454.44, or, if subsection (13) or (14) applies in relation to the covered person, the sum of \$454.44 and the amount or amounts required to be added under whichever of those subsections applies; or
  - (b) an amount equal to 90% of the covered person’s normal weekly earnings; whichever is less.
- (13) If there are prescribed persons wholly or mainly dependent on the covered person, there must be added to the amount of \$454.44 specified in paragraph (12)(a) the amount of \$112.53.
- (14) If there are prescribed children (whether born before, on or after the date of the injury) wholly or mainly dependent on the covered person, there must be added to the amount of \$454.44 specified in paragraph (12)(a) the amount of \$56.22 for each of those children, but an amount must not be so added for a child in relation to any period before the date of birth of that child.
- (15) If a prescribed child is:
- (a) a prescribed person in relation to the covered person; and
  - (b) the only prescribed person who is wholly or mainly dependent on the covered person;
- subsection (14) does not apply in relation to that child.
- (16) If 2 or more prescribed children are each:
- (a) a prescribed person in relation to the covered person; and
  - (b) wholly or mainly dependent on the covered person;
- subsection (13) applies in relation to one of those children and subsection (14) applies in relation to the remainder of those children.

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

- (1) Compensation payable to a covered person who is incapacitated for work as a result of an injury is determined in accordance with this section if:
- (a) the covered person ceases to be a covered current member and receives a pension under a superannuation scheme as a result of the cessation; or
  - (b) the covered person:
    - (i) is retired from his or her employment (whether the covered person retired voluntarily or was compulsorily retired); and
    - (ii) receives a pension under a superannuation scheme as a result of the covered person's retirement.
- (2) The Commonwealth is liable to pay compensation to the covered person, in respect of the injury, in accordance with this section for each week, after the date of the cessation or retirement, during which the covered person is incapacitated.

- (3) The amount of compensation is the amount worked out using the formula:

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

where:

***unadjusted amount of compensation*** means the amount of compensation that would have been payable to the covered person for a week if:

- (a) for a person referred to in paragraph (1)(a):
  - (i) section 29, other than subsection 29(12), had applied to the covered person; and
  - (ii) the week were a week referred to in subsection 29(8); or
- (b) for the Prime Minister's spouse:
  - (i) section 30, other than subsection 30(11), had applied to the covered person; and
  - (ii) the week were a week referred to in subsection 30(7).

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

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

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- (2) The Commonwealth is liable to pay compensation to the covered person, in respect of the injury, in accordance with this section for each week, after the date of the cessation or retirement, during which the covered person is incapacitated.
- (3) The amount of compensation is the amount worked out using the 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** means the amount of compensation that would have been payable to the covered person for a week if:

- (a) for a person referred to in paragraph (1)(a):
- (i) section 29, other than subsection 29(12), had applied to the covered person; and
  - (ii) the week were a week referred to in subsection 29(8); or
- (b) for the Prime Minister's spouse:
- (i) section 30, other than subsection 30(11), had applied to the covered person; and
  - (ii) the week were a week referred to in subsection 30(7).

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

- (a) multiplying the superannuation amount in relation to the lump sum benefit received by the covered person by the rate specified in an instrument in force under subsection 21(5) of the *Safety, Rehabilitation and Compensation Act 1988*; and
- (b) dividing the result of paragraph (a) by 52.

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

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

***superannuation amount in relation to the pension*** means the superannuation amount in relation to the pension received by the covered person in respect of the relevant week.

***unadjusted amount of compensation*** means the amount of compensation that would have been payable to the covered person for a week if:

- (a) for a person referred to in paragraph (1)(a):
  - (i) section 29, other than subsection 29(12), had applied to the covered person; and
  - (ii) the week were a week referred to in subsection 29(8); or
- (b) for the Prime Minister's spouse:
  - (i) section 30, other than subsection 30(11), had applied to the covered person; and
  - (ii) the week were a week referred to in subsection 30(7).

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

- (a) multiplying the superannuation amount in relation to the lump sum benefit received by the covered person by the rate specified in an instrument in force under subsection 21(5) of the *Safety, Rehabilitation and Compensation Act 1988*; and
- (b) dividing the result of paragraph (a) by 52.

### **34 Compensation where covered person is maintained in a hospital**

- (1) If:
  - (a) as a result of an injury, a covered person (other than a covered person to whom section 31, 32 or 33 applies) is maintained as a patient in a hospital, nursing home or similar place and has been so maintained for a continuous period of not less than 12 months; and
  - (b) there are no prescribed persons or prescribed children who are dependent on the covered person;the Commonwealth is liable to pay compensation to the covered person in respect of the injury of such amount, for each week during which the covered person is so maintained, as is determined by Comcare having regard to:
  - (c) the present and probable future needs and expenses of the covered person; and
  - (d) the period during which the covered person is likely to be such a patient.
- (2) An amount determined under subsection (1) must not be less than one-half of, nor more than, the amount per week of compensation that would have been payable to the covered person under section 28, 29, 30, 31, 32 or 33 had that section applied to the covered person.

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**35 Compensation for incapacity not payable in certain cases**

- (1) Compensation is not payable under section 28, 29, 30, 31, 32, 33 or 34 to a covered person who has reached 65 years of age.
- (2) However, if a covered person who has reached 63 years of age suffers an injury:
  - (a) subsection (1) does not apply; and
  - (b) compensation is payable under section 28, 29, 30, 31, 32, 33 or 34 in respect of the injury:
    - (i) to the extent that this instrument (other than subsection (1) of this section) allows; and
    - (ii) for a maximum of 104 weeks (whether consecutive or not) during which the covered person is incapacitated.
- (3) Compensation is not payable under section 28, 29, 30, 31, 32 or 33 in respect of any period during which the covered person is imprisoned in connection with his or her conviction of an offence.
- (4) Subject to section 44, if a determination is made that an amount of compensation is payable to a covered person under section 43 in respect of an injury, compensation is not payable to the covered person under section 28, 29, 30, 31, 32 or 33 in respect of a period of incapacity for work resulting from that injury, being a period occurring after the day on which the determination is made.

## **Division 4—Injuries resulting in permanent impairment**

### **36 Compensation for injuries resulting in permanent impairment**

- (1) If an injury to a covered person results in a permanent impairment, the Commonwealth is liable to pay compensation to the covered person in respect of the injury.
- (2) For the purpose of determining whether an impairment is permanent, Comcare must have regard to:
  - (a) the duration of the impairment; and
  - (b) the likelihood of improvement in the covered person's condition; and
  - (c) whether the covered person has undertaken all reasonable rehabilitative treatment for the impairment; and
  - (d) any other relevant matters.
- (3) Subject to this section, the amount of compensation payable to the covered person is the amount assessed by Comcare under subsection (4), being an amount not exceeding the maximum amount at the date of the assessment.
- (4) The amount assessed by Comcare must be an amount that is the same percentage of the maximum amount as the percentage determined by Comcare under subsection (5).
- (5) Comcare must determine the degree of permanent impairment of the covered person resulting from an injury under the provisions of the approved Guide, in accordance with section 40.
- (6) The degree of permanent impairment must be expressed as a percentage.
- (7) Subject to section 37, if:
  - (a) the covered person has a permanent impairment other than a hearing loss; and
  - (b) Comcare determines that the degree of permanent impairment is less than 10%;an amount of compensation is not payable to the covered person under this section.
- (8) Subject to section 37, if:
  - (a) the covered person has a permanent impairment that is a hearing loss; and
  - (b) Comcare determines that the binaural hearing loss suffered by the covered person is less than 5%;an amount of compensation is not payable to the covered person under this section.
- (9) Subsection (7) does not apply to any one or more of the following:
  - (a) the impairment constituted by the loss, or the loss of the use, of a finger;
  - (b) the impairment constituted by the loss, or the loss of the use, of a toe;
  - (c) the impairment constituted by the loss of the sense of taste;
  - (d) the impairment constituted by the loss of the sense of smell.

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(10) For the purposes of this section, the maximum amount is \$179,975.26.

**37 Interim payment of compensation**

- (1) If Comcare:
  - (a) makes a determination that a covered person is suffering from a permanent impairment as a result of an injury; and
  - (b) is satisfied that the degree of the impairment is equal to or more than 10% but has not made a final determination of the degree of impairment;Comcare must, on the written request of the covered person made at any time before the final determination is made, make an interim determination of the degree of permanent impairment under section 36 and assess an amount of compensation payable to the covered person.
- (2) The amount assessed by Comcare under subsection (1) must be an amount that is the same percentage of the maximum amount specified in subsection 36(10) as the percentage determined by Comcare under subsection (1) of this section to be the degree of permanent impairment of the covered person.
- (3) If, after an amount of compensation has been paid to a covered person following the making of an interim determination, Comcare makes a final determination of the degree of permanent impairment of the covered person, there is payable to the covered person an amount equal to the difference (if any) between the amount payable under section 36 on the making of the final determination and the amount paid to the covered person under this section.
- (4) If Comcare has made a final assessment of the degree of permanent impairment of a covered person (other than a hearing loss), no further amounts of compensation are payable to the covered person in respect of a subsequent increase in the degree of impairment, unless the increase is 10% or more.
- (5) If Comcare has made a final assessment of the degree of permanent impairment of a covered person constituted by a hearing loss, no further amounts of compensation are payable to the covered person in respect of a subsequent increase in the hearing loss, unless the subsequent increase in the degree of binaural hearing loss is 5% or more.

**38 Payment of compensation**

- (1) Subject to this section, an amount of compensation payable to a covered person under section 36 or 37 must be paid to the covered person within 30 days after the date of the assessment of the amount.
- (2) If an amount of compensation is not paid to a covered person in accordance with subsection (1), interest is payable to the covered person on that amount in respect of the period that begins at the end of the period of 30 days referred to in that subsection and ends on the day on which the amount is paid.
- (3) Interest payable under subsection (2) must be paid at the rate specified in an instrument in force under subsection 26(3) of the *Safety, Rehabilitation and Compensation Act 1988*.
- (4) This section does not apply if:

- (a) Comcare has been requested under Part 6 to reconsider a determination under section 36 or 37, as the case may be; or
- (b) an application has been made to the Administrative Appeals Tribunal for review of a decision relating to such a determination.

### **39 Compensation for non-economic loss**

- (1) If an injury to a covered person results in a permanent impairment and compensation is payable in respect of the injury under section 36, the Commonwealth is liable to pay additional compensation in accordance with this section to the covered person in respect of that injury for any non-economic loss suffered by the covered person as a result of that injury or impairment.
- (2) The amount of compensation is an amount worked out using the formula:

$$\left( \$33,745.38 \times A \right) + \left( \$33,745.38 \times B \right)$$

where:

*A* is the percentage finally determined by Comcare under section 36 to be the degree of permanent impairment of the covered person.

*B* is the percentage determined by Comcare under the approved Guide, in accordance with section 40, to be the degree of non-economic loss suffered by the covered person.

### **40 Approved Guide**

- (1) This section applies if a matter in relation to a covered person is being determined under the approved Guide for the purposes of a provision of this Part.
- (2) The approved Guide must be applied in relation to the covered person in the same way as the approved Guide would be applied under the *Safety, Rehabilitation and Compensation Act 1988* in relation to an employee (within the meaning of that Act) other than a member of the Defence Force.

Note: See section 28 of the *Safety, Rehabilitation and Compensation Act 1988*.

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## Division 5—Other compensation

### 41 Compensation for household services and attendant care services

- (1) Subject to subsection (5), if, as a result of an injury to a covered person, the covered person obtains household services that he or she reasonably requires, the Commonwealth is liable to pay compensation of such amount per week as Comcare considers reasonable in the circumstances, so long as that amount is:
  - (a) not less than 50% of the amount per week paid or payable by the covered person for those services; and
  - (b) not more than \$449.92.
- (2) Without limiting the matters that Comcare may take into account in determining the household services that are reasonably required in a particular case, Comcare must, in making such a determination, have regard to the following matters:
  - (a) the extent to which household services were provided by the covered person before the date of the injury and the extent to which he or she is able to provide those services after that date;
  - (b) the number of persons living with the covered person as members of his or her household, their ages and their need for household services;
  - (c) the extent to which household services were provided by the persons referred to in paragraph (b) before the injury;
  - (d) the extent to which the persons referred to in paragraph (b), or any other members of the covered person's family, might reasonably be expected to provide household services for themselves and for the covered person after the injury;
  - (e) the need to avoid substantial disruption to the employment or other activities of the persons referred to in paragraph (b).

Note: For paragraph (2)(d), see also subsection 7(1) (family relationships).

- (3) If, as a result of an injury to a covered person, the covered person obtains attendant care services that he or she reasonably requires, the Commonwealth is liable to pay compensation of:
  - (a) \$449.92 per week; or
  - (b) an amount per week equal to the amount per week paid or payable by the covered person for those services;whichever is less.
- (4) Without limiting the matters that Comcare may take into account in determining the attendant care services that are reasonably required in a particular case, Comcare must, in making such a determination, have regard to the following matters:
  - (a) 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;
  - (b) 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;
  - (c) the extent to which it is reasonable to meet any wish by the covered person to live outside an institution;

- (d) the extent to which attendant care services are necessary to enable the covered person to undertake or continue covered activities or employment;
- (e) any assessment made in relation to the rehabilitation of the covered person;
- (f) the extent to which a relative of the covered person might reasonably be expected to provide attendant care services.

Note: For paragraph (4)(f), see also subsection 7(1) (family relationships).

- (5) The Commonwealth is not liable to pay compensation under subsection (1) in respect of any week within the period of 28 days beginning on the date of the injury unless Comcare determines otherwise in a particular case on the ground of financial hardship or the need to provide for adequate supervision of dependent children.
- (6) An amount of compensation payable under subsection (1) or (3) is payable:
  - (a) if the covered person has paid for the household services or attendant care services, as the case may be—to the covered person; or
  - (b) in any other case—to the person who provided those services.
- (7) If an amount is paid under this section to a person who provided household services or attendant care services to a covered person, the payment of the amount is, to the extent of the payment, a discharge of the liability of the covered person to pay for those services.

#### **42 Compensation for certain alterations etc.**

- (1) If a covered person suffers an injury resulting in an impairment, the Commonwealth is liable to pay compensation, of such amount as Comcare determines is reasonable, for the costs payable by the covered person of:
  - (a) any alteration of the covered person's place of residence or place of work; or
  - (b) any modifications of a vehicle or article used by the covered person; or
  - (c) any aids or appliances for the use of the covered person, or the repair or replacement of such aids or appliances;being alterations, modifications or aids or appliances reasonably required by the covered person, having regard to the nature of the covered person's impairment.
- (2) Without limiting the matters that may be taken into account in determining the amount of compensation payable in a particular case under subsection (1), Comcare must, in determining the amount of the compensation, have regard to such of the following matters as are relevant in that case:
  - (a) the likely period during which the alteration, modification, aid or appliance will be required;
  - (b) any difficulties faced by the covered person in gaining access to, or enjoying reasonable freedom of movement in, his or her place of residence or work;
  - (c) any difficulties faced by the covered person in gaining access to, driving or enjoying freedom and safety of movement in, a vehicle used by the covered person;
  - (d) any alternative means of transport available to the covered person;
  - (e) whether arrangements can be made for hiring the relevant aid or appliance;

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- (f) if the covered person has previously received compensation under this section in respect of an alteration of his or her place of residence or a modification of a vehicle and has later disposed of that place of residence or vehicle—whether the value of that place of residence or vehicle was increased as a result of the alteration or modification.
- (3) An amount of compensation payable under this section is payable:
- (a) to, or in accordance with the directions of, the covered person; or
  - (b) if:
    - (i) the covered person dies before the compensation is paid and without having paid the cost referred to in subsection (1); and
    - (ii) another person (who is not the legal personal representative of the covered person) has paid that cost;to that other person; or
  - (c) if:
    - (i) the cost referred to in subsection (1) has not been paid; and
    - (ii) the covered person (or the legal personal representative of the covered person) is unable, or refuses or fails, to make a claim for the compensation;to the person to whom that cost is payable.
- (4) If a person is liable to pay any cost referred to in subsection (1), any amount paid under subsection (3) to the person to whom that cost is payable is, to the extent of the payment, a discharge of the liability of the first-mentioned person.



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## Division 6—Miscellaneous

### 43 Redemption of compensation

- (1) If:
- (a) the Commonwealth is liable to make weekly payments under section 28, 29, 30, 31, 32 or 33 to a covered person in respect of an injury resulting in an incapacity; and
  - (b) the amount of those payments is \$112.53 per week or less; and
  - (c) Comcare is satisfied 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 to the covered person under that section be redeemed by the payment to the covered person of a lump sum.

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

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

where:

**amount per week** means the amount per week payable to the covered person under section 28, 29, 30, 31, 32 or 33, as the case may be, at the date of the determination.

**n** means the number (calculated to 3 decimal places) worked out by dividing by 365 the number of days in the period:

- (a) beginning on the day after the day on which the determination is made; and
- (b) ending:
  - (i) if the covered person is injured before reaching 63 years of age—on the day immediately before the day on which the covered person reaches 65 years of age; and
  - (ii) if the covered person is injured on or after reaching 63 years of age—on the day immediately before the covered person would cease to be entitled to receive compensation under section 28, 29, 30, 31, 32 or 33.

**specified number** means the number specified in an instrument in force under subsection 30(4) of the *Safety, Rehabilitation and Compensation Act 1988*.

### 44 Recurrent payments after payment of lump sum

- (1) If:
- (a) at any time after a lump sum is paid to a covered person under section 43 in respect of an injury, the injury results in the covered person being incapacitated for work to the extent that the covered person is not able to engage in suitable employment; and

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- (b) the incapacity is likely to continue indefinitely;  
the Commonwealth is liable to pay compensation to the covered person under this section during the period of the incapacity.
- (2) The amount of compensation is an amount per week equal to the amount per week that would, but for the payment of the lump sum, have been payable to the covered person under section 28, 29, 30, 31, 32 or 33, as the case may be, in respect of the incapacity, less the amount per week that was redeemed at the date of the determination under section 43.

### **45 Cancelled determinations not to affect certain payments of compensation**

- (1) For the purposes of subsections 35(4) and 44(2), account must not be taken of a determination that the liability of the Commonwealth to make further payments to a covered person under section 28, 29, 30, 31, 32 or 33 is to be redeemed if the determination:
- (a) is revoked by Comcare; or
  - (b) is set aside by a tribunal or court.
- (2) Paragraph (1)(b) does not apply if a further determination is made by a tribunal or court, under which the liability of the Commonwealth to make further payments to the covered person under section 28, 29, 30, 31, 32 or 33 is to be redeemed.

### **46 Reduction of compensation in certain cases**

- (1) If, in relation to a day in respect of which compensation is payable to a covered person under section 28, 29, 30, 31, 32, 33, 34 or 44, an amount or amounts are paid or payable to the covered person by the Commonwealth by way of salary, wages or pay, the amount of compensation payable under that section in respect of that day must be reduced by the amount, or the sum of the amounts, so paid or payable to the covered person.
- (2) In this section, a reference to an amount paid or payable to a covered person by the Commonwealth does not include a reference to:
- (a) an amount by way of pay in respect of a period of leave of absence granted, or in lieu of the grant of a period of leave of absence, under section 16 or 17 of the *Long Service Leave (Commonwealth Employees) Act 1976*; or
  - (b) an amount by way of pay in respect of a period of leave of absence, or in lieu of the grant of a period of leave of absence, in the nature of long service leave under a law of a State or Territory or an industrial award, determination, order or agreement; or
  - (c) an amount of relevant allowance or salary paid or payable to the covered person that has been taken into account for the purposes of calculating the amount of compensation payable to the covered person under section 28; or
  - (d) any other amount that the covered person is able to earn in suitable employment or any amount of earnings payable to a covered person, being an amount that has been taken into account for the purposes of calculating the amount of compensation payable to the covered person under section 29 or 30.

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

### **47 Services, facilities or equipment relating to risks to health or safety**

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

## Part 4—Liabilities arising apart from the scheme

### 48 Interpretation

In this Part:

- (a) a reference to the loss of, or damage to, property used by a covered person is a reference to the loss of, or damage to, the property in circumstances referred to in section 24; and
- (b) a reference to a covered person is, if the covered person has died, a reference to his or her legal personal representative; and
- (c) a reference to a dependant of a deceased covered person is, if the dependant has died, a reference to the dependant's legal personal representative.

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

- (1) Subject to section 50, an action or other proceeding for damages does not lie against the Commonwealth or a covered person in respect of:
  - (a) an injury sustained by a covered person in the course of his or her covered activities, if the injury is an injury in respect of which the Commonwealth would, but for this subsection, be liable (whether vicariously or otherwise) for damages; or
  - (b) the loss of, or damage to, property used by a covered person resulting from such an injury;if that injury, loss or damage occurred after the commencement of this section.
- (2) If:
  - (a) a covered person has suffered an injury in the course of his or her covered activities; and
  - (b) that injury results in that covered person's death;subsection (1) does not prevent a dependant of that covered person bringing an action against the Commonwealth or another covered person in respect of the death of the deceased covered person.
- (3) Subsection (2) applies whether or not the deceased covered person, before his or her death, had made an election under subsection 50(1).

### 50 Actions for damages—election by covered person

- (1) If:
  - (a) compensation is payable under section 36, 37 or 39 in respect of an injury to a covered person (the *injured covered person*); and
  - (b) the Commonwealth or another covered person would, but for subsection 49(1), be liable for damages for any non-economic loss suffered by the injured covered person as a result of the injury;the injured covered person may make an election in accordance with subsection (2) to institute an action or proceeding against the Commonwealth or the other covered person for damages for that non-economic loss.

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- (2) An election:
    - (a) must be made before an amount of compensation is paid to the injured covered person under section 36, 37 or 39 in respect of the injury; and
    - (b) must be given to Comcare; and
    - (c) must be in writing.
  - (3) If a covered person makes an election:
    - (a) subsection 49(1) does not apply in relation to an action or other proceeding subsequently instituted by the covered person against the Commonwealth or another covered person for damages for the non-economic loss to which the election relates; and
    - (b) compensation is not payable after the date of the election under section 36, 37 or 39 in respect of the injury.
  - (4) An election is irrevocable.
  - (5) In any action or proceeding instituted as a result of an election made by a covered person, the court must not award the covered person damages of an amount exceeding \$110,000 for any non-economic loss suffered by the covered person.
  - (6) The election by a covered person under this section to institute an action or proceeding against the Commonwealth or another covered person does not prevent the covered person, before, or instead of, formally instituting such action or proceeding, doing any other thing that constitutes an action for non-economic loss.

## **51 Notice of common law claims against third party**

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

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

### *Offence*

- (2) A person commits an offence of strict liability if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person omits to do an act; and
  - (c) the omission breaches the requirement.

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Penalty: 5 penalty units.

**52 Notice of common law claims against Commonwealth**

- (1) If:
- (a) compensation is payable under the scheme in respect of the death of a covered person or an injury to a covered person; and
  - (b) the covered person, or a dependant of the deceased covered person, as the case may be, makes a claim for damages in respect of the death or injury against the Commonwealth or another covered person;
- the covered person referred to in paragraph (a) or the dependant must, as soon as practicable but in any event not later than 7 days after the day on which he or she first became aware of the claim, notify Comcare in writing of the claim.

*Offence*

- (2) A person commits an offence of strict liability if:
- (a) the person is subject to a requirement under subsection (1); and
  - (b) the person omits to do an act; and
  - (c) the omission breaches the requirement.

Penalty: 5 penalty units.

**53 Compensation not payable if damages recovered**

- (1) This section applies if:
- (a) a covered person recovers damages in respect of:
    - (i) an injury to the covered person; or
    - (ii) the loss of, or damage to, property used by the covered person; in respect of which compensation is payable under the scheme; or
  - (b) damages are recovered by, or for the benefit of, a dependant of a deceased covered person in respect of the death of the covered person, and compensation is payable under the scheme in respect of the injury that resulted in that death.

*Notification*

- (2) The covered person or dependant must, not later than 28 days after the day on which the damages were recovered, notify Comcare in writing of the recovery of the damages and the amount of the damages.
- (3) A person commits an offence of strict liability if:
- (a) the person is subject to a requirement under subsection (2); and
  - (b) the person omits to do an act; and
  - (c) the omission breaches the requirement.

Penalty: 10 penalty units.

*Damages recovered*

- (4) If, before the recovery of the damages by, or for the benefit of, the covered person or dependant, any compensation under the scheme was paid:
- (a) to, or for the benefit of, the covered person in respect of the injury, loss or damage; or
  - (b) to, or for the benefit of, the dependant in respect of the injury that resulted in the death of the covered person;
- as the case may be, the covered person or dependant is liable to pay to the Commonwealth an amount equal to the lesser of the following:
- (c) the amount of the compensation;
  - (d) the amount of the damages.
- (5) Compensation is not payable under the scheme:
- (a) to the covered person in respect of the injury, loss or damage; or
  - (b) to, or for the benefit of, the dependant in respect of the injury that resulted in the death of the covered person;
- after the date on which the damages were recovered by the covered person or by, or for the benefit of, the dependant, as the case may be.
- (6) Subsection (4) 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.
- (7) Subsection (5) does not apply if the damages were recovered:
- (a) as a result of a claim, or fresh claim, made by Comcare under section 55 (whether or not that claim progressed to the formal institution of proceedings); or
  - (b) as a result of Comcare's taking over the conduct of a claim under that section; or
  - (c) as a result of an action for non-economic loss; or
  - (d) by way of a settlement of such a claim or of such an action (whether or not that claim or that action progressed to the formal institution of proceedings).
- (8) A reference in subsection (4) to compensation under the scheme that was paid for the benefit of a dependant does not include a reference to compensation paid under subsection 26(5).
- (9) If a covered person, or a dependant of a covered person, establishes to the satisfaction of Comcare that a part of the damages referred to in subsection (1) did not relate to an injury, loss or damage in respect of which compensation is payable under the scheme, subsection (4) applies in relation to that covered person or dependant as if the amount of the damages were an amount equal to so much of the amount of the damages as did relate to an injury, loss or damage in respect of which compensation is payable under the scheme.

**54 Dependants not claiming compensation**

- (1) For the purposes of this section, a dependant of a deceased covered person is a ***prescribed dependant*** of the deceased covered person if:

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- (a) compensation is payable under the scheme in respect of an injury that resulted in the death of the covered person; and
  - (b) no claim for compensation under the scheme has been made by, or on behalf of, the dependant in respect of the injury; and
  - (c) damages in respect of the death of the covered person are recovered by or for the benefit of the dependant.
- (2) If there is only one prescribed dependant of the deceased covered person, he or she is liable to pay to the Commonwealth the lesser of the following:
- (a) the amount of the compensation referred to in paragraph (1)(a) (subject to subsection (5));
  - (b) the amount of the damages recovered by the prescribed dependant.
- (3) If there is more than one prescribed dependant of the deceased covered person, each prescribed dependant is liable to pay to the Commonwealth the lesser of the following:
- (a) the adjusted compensation amount for that prescribed dependant worked out under subsection (4);
  - (b) the amount of the damages recovered by that prescribed dependant.
- (4) The **adjusted compensation amount** for a prescribed dependant is the amount worked out using the formula:

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

where:

**AC** is the amount of the compensation referred to in paragraph (1)(a) (subject to subsection (5)).

**DI** is the amount of the damages recovered by the prescribed dependant in respect of the death of the covered person.

**D2** is the total amount of the damages recovered by all prescribed dependants of the deceased covered person in respect of the death of the covered person.

- (5) For the purposes of this section, the amount of the compensation referred to in paragraph (1)(a):
- (a) does not include:
    - (i) any amount of compensation that the Commonwealth is liable to pay for the benefit of a dependant of the deceased covered person, if the dependant is not entitled to recover damages in respect of the death of the covered person (whether by reason of the operation of a statute of limitations or otherwise); or
    - (ii) any amount of compensation payable under subsection 26(5); and
  - (b) is taken to be reduced by any amount that a dependant of the deceased covered person is liable to pay to the Commonwealth under section 53.

## 55 Common law claims against third parties

- (1) If:



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- (a) an amount of compensation under the scheme:
    - (i) is paid to a covered person in respect of an injury to the covered person or in respect of the loss of, or damage to, property used by the covered person; or
    - (ii) is paid for the benefit of a dependant of a deceased covered person in respect of an injury that resulted in the death of the covered person; and
  - (b) the injury, loss, damage or death occurred in circumstances that appear to create a legal liability in a person (the *liable person*), other than the Commonwealth or another covered person, to pay damages in respect of the injury, loss, damage or death; and
  - (c) a claim against the liable person for the purpose of recovering such damages has not been made by the covered person or by or for the benefit of the dependant, or, having been made, has not been prosecuted;

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

- (2) If Comcare takes over the conduct of a claim, the Commonwealth becomes liable to pay all costs of and incidental to that claim that would otherwise be payable by the person who originally made the claim, other than costs unreasonably incurred by that person.
- (3) If Comcare makes, or takes over the conduct of, a claim under this section, Comcare may:
  - (a) take whatever steps are appropriate to bring the claim to a conclusion; and
  - (b) if the claim is before a court—settle the proceedings either with or without obtaining judgment; and
  - (c) if the claim is before a court and judgment has been obtained in favour of the plaintiff—take such steps as are necessary to enforce the judgment.
- (4) If Comcare requires the covered person or dependant to sign a document relevant to a claim made or taken over by Comcare under this section (including the settlement of the claim or of any proceedings arising out of the claim), the covered person or dependant must sign the document.
- (5) If the covered person or dependant fails to sign a document in accordance with a requirement under subsection (4):
  - (a) if the claim is not before a court or tribunal at the time of the failure—the Federal Court of Australia, on the application of Comcare, may direct that the document be signed on the covered person or dependant's behalf by a person appointed by Comcare; and
  - (b) otherwise—the court or tribunal in which proceedings relating to the claim are being heard, on the application of Comcare, may so direct.
- (6) If Comcare proposes to make an application under subsection (5):
  - (a) Comcare must notify the covered person or dependant concerned of the fact that it is proposing to so apply; and
  - (b) the covered person or dependant concerned has a right of representation in the hearing of that application.

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- (7) If Comcare makes or takes over the conduct of a claim under this section:
- (a) the covered person or dependant must comply with any reasonable requirement of Comcare for the purposes of the claim; and
  - (b) if the covered person or dependant fails to comply with such a requirement, the right of the covered person or dependant to compensation under the scheme in respect of the injury, loss, damage or death to which the claim relates is suspended until such time as the covered person or dependant complies with the requirement.
- (8) However, paragraph (7)(b) does not operate to suspend the covered person's right to compensation for the cost of medical treatment that is payable under section 25.
- (9) If a right to compensation is suspended under subsection (7), compensation is not payable in respect of the period of the suspension.
- (10) Any damages obtained as a result of a claim made or taken over by Comcare under this section (including damages payable as a result of the settlement of such a claim) must be paid to the Commonwealth and the Commonwealth must deduct from the amount of those damages:
- (a) an amount equal to the total of all amounts of compensation paid to, or for the benefit of, the covered person or dependant under the scheme in respect of the injury, loss, damage or death to which the claim relates; and
  - (b) the amount of any costs incidental to the claim paid by the Commonwealth.
- The Commonwealth must pay the balance (if any) to the covered person or dependant.
- (11) If the Commonwealth pays an amount to a covered person or dependant under subsection (10), the covered person or dependant is not entitled to receive any further amounts of compensation under the scheme in respect of the injury, loss, damage or death to which the proceedings related until the amount of compensation that would, but for this subsection, have been payable to the covered person or dependant in respect of that injury, loss, damage or death equals the amount paid by the Commonwealth to the covered person or dependant under subsection (10).

## 56 Payment of damages by persons to the Commonwealth

- (1) If a person (the *liable person*), other than the Commonwealth or a covered person, appears to be liable:
- (a) to pay damages to a covered person in respect of an injury to the covered person, or in respect of the loss of, or damage to, property used by the covered person, being an injury, loss or damage in respect of which an amount of compensation has been paid under the scheme; or
  - (b) to pay damages to a dependant of a deceased covered person in respect of the death of the covered person, where that death resulted from an injury in respect of which an amount of compensation has been paid under the scheme;

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

- (c) if the liable person agrees to pay damages to the covered person in respect of the injury, loss or damage or to the dependant in respect of the death; or

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

the liable person pay to the Commonwealth so much of the amount of the damages as does not exceed the amount that would be payable by the covered person or dependant to the Commonwealth under section 53 or 54 if the damages had been paid to the covered person or dependant.

- (2) Subject to subsection (3), if:
- (a) a person (the **liable person**), other than the Commonwealth or a covered person, has agreed:
- (i) to pay damages to a covered person in respect of an injury to the covered person, or in respect of the loss of, or damage to, property used by the covered person, being an injury, loss or damage in respect of which an amount of compensation has been paid under the scheme; or
- (ii) to pay damages to a dependant of a deceased covered person in respect of the death of the covered person, where that death resulted from an injury in respect of which an amount of compensation has been paid under the scheme; or
- (b) damages against a person (the **liable person**), other than the Commonwealth or a covered person, have been awarded:
- (i) to a covered person in proceedings arising out of a claim made in respect of an injury to the covered person or in respect of the loss of, or damage to, property used by the covered person, being an injury, loss or damage in respect of which an amount of compensation has been paid under the scheme; or
- (ii) to a dependant of a deceased covered person in proceedings arising out of a claim made in respect of the death of the covered person, where that death resulted from an injury in respect of which an amount of compensation has been paid under the scheme;

Comcare may, by notice in writing given to the liable person, require the liable person to pay to the Commonwealth so much of the amount of the damages as does not exceed the amount that would be payable by the covered person or dependant to the Commonwealth under section 53 or 54 if the damages had been paid to or in respect of the covered person or the dependant.

- (3) If, before a notice under subsection (2) is received by a person, the person pays, to or in respect of the covered person or dependant, all or part of the damages to which the notice relates:
- (a) if all of the damages have been paid—the notice has no force or effect; or
- (b) if part only of the damages have been paid—the reference in that subsection to the amount of the damages is to be read as a reference to so much of that amount as has not been paid.
- (4) If a person fails to pay an amount to the Commonwealth in accordance with a notice under this section, Comcare may recover that amount from the person in a court of competent jurisdiction as a debt due to the Commonwealth.

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- (5) The payment of an amount to the Commonwealth by a person in accordance with a notice under this section is, to the extent of the amount paid, a discharge of the liability of that person to the covered person or dependant and of the liability (if any) of the covered person or dependant to the Commonwealth under section 53 or 54.

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

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

- (8) If, in the action:
- (a) damages are awarded against the party claimed against; or
  - (b) a settlement is agreed on that involves the payment of an amount by the party claimed against;
- then, whether or not the conduct of the action was taken over by Comcare, Comcare must, on behalf of that party, pay any damages and costs awarded against that party in that action or any amount agreed to be paid by that party under the terms of settlement of that proceeding.
- (9) Any payment made by Comcare under subsection (8) is taken to have been made in satisfaction of the liability of the party claimed against.
- (10) If Comcare has taken over the conduct of the action and any amount is payable by way of costs to the party claimed against, that amount is payable to the Commonwealth.

## Part 5—Claims for compensation

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

- (1) The scheme does not apply in relation to an injury to a covered person unless notice in writing of the injury is given to Comcare:
  - (a) as soon as practicable after the covered person becomes aware of the injury; or
  - (b) if the covered person dies without having become so aware or before it is practicable to serve such a notice—as soon as practicable after the covered person's death.
- (2) The scheme does not apply in relation to the loss of, or damage to, property used by a covered person in circumstances referred to in section 24 unless notice in writing of the accident that resulted in the loss or damage is given to Comcare:
  - (a) as soon as practicable after the covered person becomes aware that the accident had resulted in the loss or damage; or
  - (b) if the covered person dies without having become so aware or before it is practicable to serve such a notice—as soon as practicable after the covered person's death.
- (3) If:
  - (a) a notice purporting to be a notice referred to in this section has been given to Comcare; and
  - (b) the notice does not comply with the requirements of this section (in relation to the time of giving the notice, or otherwise); and
  - (c) either or both of the following apply:
    - (i) the Commonwealth would not, by reason of the non-compliance, be prejudiced;
    - (ii) the non-compliance resulted from the death of a person, the absence of a person from Australia, ignorance, a mistake or any other reasonable cause;the notice is taken to have been given under this section.

### 59 Claims for compensation

- (1) Compensation is not payable to a person under the scheme unless a claim for compensation is made by or on behalf of the person under this section.
- (2) A claim must be made by giving Comcare:
  - (a) a written claim in accordance with the form approved, in writing, by Comcare for the purposes of this paragraph; and
  - (b) for claims other than claims under section 25 or 26—a certificate by a legally qualified medical practitioner in accordance with the form approved, in writing, by Comcare for the purposes of this paragraph.
- (3) If a written claim, other than a claim for compensation under section 25 or 26, is given to Comcare under paragraph (2)(a) of this section and the claim is not

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accompanied by a certificate of the kind referred to in paragraph (2)(b) of this section, the claim is taken not to have been made until such a certificate is given to Comcare.

### **60 Survival of claims**

- (1) If a person who is entitled to make a claim for compensation under the scheme dies without making a claim, a claim may be made by the person's legal personal representative.
- (2) A claim is not affected by the death of the claimant after the claim was served.
- (3) Section 80 applies in relation to an amount payable under a determination made in respect of a claim referred to in this section as if the deceased person had died after the determination was made.
- (4) This section does not apply in relation to a claim for compensation under section 39.

### **61 Claims may not be made in certain cases**

If an amount is paid to, or in accordance with the directions of, Comcare under subsection 26(3) or (4), for the benefit of a dependant of a deceased covered person, by whom, or on whose behalf, a claim was made for compensation under section 26, no other dependant of that covered person is entitled to claim compensation under section 26 after the day on which that amount is so paid.

### **62 Comcare's power to require medical examination**

- (1) If:
  - (a) a notice has been given to Comcare under section 58 in relation to a covered person; or
  - (b) a covered person has made a claim for compensation under section 59;Comcare may require the covered person to undergo an examination by one legally qualified medical practitioner nominated by Comcare.
- (2) If a covered person refuses or fails, without reasonable excuse, to undergo an examination, or in any way obstructs an examination, the covered person's rights to compensation under the scheme, and to institute or continue any proceedings under the scheme in relation to compensation, are suspended until the examination takes place.
- (3) The Commonwealth must pay the cost of conducting any examination required under this section and is liable to pay to the covered person an amount equal to the amount of the expenditure Comcare determines to be reasonably incurred by the covered person in:
  - (a) making a necessary journey in connection with the examination; or
  - (b) remaining, for the purpose of the examination, at a place to which the covered person has made a journey for that purpose.
- (4) The matters to which Comcare must have regard in deciding questions arising under subsection (3) include:

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- (a) the means of transport available to the covered person for the journey; and
  - (b) the route or routes by which the covered person could have travelled; and
  - (c) the accommodation available to the covered person.
- (5) If a covered person's right to compensation is suspended under subsection (2), compensation is not payable in respect of the period of the suspension.
- (6) A covered person must not be required to undergo an examination under this section at more frequent intervals than are specified in an instrument in force under subsection 57(6) of the *Safety, Rehabilitation and Compensation Act 1988*.

### 63 Assessment of employment capability

- (1) If a covered person suffers an injury resulting in an incapacity for work or an impairment, Comcare may at any time, 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.
- (2) An assessment must be made by:
- (a) a legally qualified medical practitioner nominated by Comcare; or
  - (b) a suitably qualified person (other than a medical practitioner) nominated by Comcare; or
  - (c) a panel comprising such legally qualified medical practitioners or other suitably qualified persons (or both) as are nominated by Comcare.
- (3) Comcare may require the covered person to undergo an examination by the person or panel of persons making the assessment.
- (4) If a covered person refuses or fails, without reasonable excuse, to undergo an examination in accordance with a requirement under this section, or in any way obstructs such an examination, the covered person's rights to compensation under the scheme, and to institute or continue any proceedings under the scheme in relation to compensation, are suspended until the examination takes place.
- (5) However, subsection (4) does not operate to suspend the covered person's right to compensation for the cost of medical treatment that is payable under section 25.
- (6) The Commonwealth must pay the cost of conducting any examination of a covered person and is liable to pay to the covered person an amount equal to the amount of the expenditure that Comcare determines was reasonably incurred by the covered person in:
- (a) making a necessary journey in connection with the examination; or
  - (b) remaining, for the purpose of the examination, at a place to which the covered person has made a journey for that purpose.
- (7) In deciding questions arising under subsection (6), Comcare must have regard to:
- (a) the means of transport available to the covered person for the journey; and
  - (b) the route or routes by which the covered person could have travelled; and
  - (c) the accommodation available to the covered person.



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- (8) If a covered person's right to compensation is suspended under subsection (4), compensation is not payable in respect of the period of the suspension.
  - (9) If an examination is carried out, the person or persons who carried out the examination must give Comcare a written assessment of the covered person's capability of returning to work in suitable employment, specifying, where appropriate:
    - (a) the hours which the covered person is capable of working; and
    - (b) the level at which the covered person is capable of working.

#### **64 Comcare's power to request the provision of information**

- (1) If Comcare has received a claim and is satisfied that the claimant:
  - (a) has information or a document that is relevant to the claim; or
  - (b) may obtain such information or a copy of such a document without unreasonable expense or inconvenience;Comcare may, by notice in writing given to the claimant, request the claimant to give that information or a copy of that document to Comcare within 28 days after the date of the notice or within such further period (if any) as Comcare, on the request of the claimant, allows.
- (2) If a claimant refuses or fails, without reasonable excuse, to comply with a notice under subsection (1), Comcare may refuse to deal with the claim until the claimant gives Comcare the information, or a copy of the document, specified in the notice.

#### **65 Comcare must supply certain documents on request**

Comcare must:

- (a) on request by a claimant—give to the claimant any document held by Comcare that relates to the claimant's claim; or
- (b) on request by a covered person who has made a request under section 37—give to the covered person any document held by Comcare that relates to the request under section 37.

## Part 6—Reconsideration and review of determinations

### 66 Definitions

In this Part:

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

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

**determination** means a determination, decision or requirement made under section 15, 16, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 39, 41, 42, 43, 44 or 63, or under paragraph 85(6)(a).

**reviewable decision** means a decision made under section 69.

### 67 Parties to proceedings

For the purposes of this Part, the **parties** to proceedings instituted under this Part are:

- (a) the applicant; and
- (b) Comcare.

### 68 Making and notification of determinations

- (1) Comcare must consider and determine each claim for compensation under section 23 within the period (if any) prescribed by regulations made for the purposes of subsection 61(1A) of the *Safety, Rehabilitation and Compensation Act 1988*.
- (2) As soon as practicable after Comcare makes a determination, it must give the claimant a notice in writing setting out:
  - (a) the terms of the determination; and
  - (b) the reasons for the determination; and
  - (c) a statement to the effect that the claimant may, if dissatisfied with the determination, request a reconsideration of the determination under subsection 69(2).
- (3) This section does not apply in relation to a determination under subsection 25(1) that compensation of an amount equal to the full amount of the cost of medical treatment obtained by a covered person is payable, if that amount of compensation is payable to a person other than the covered person.

### 69 Reconsideration of determinations

- (1) Comcare may, on its own initiative:
  - (a) reconsider a determination made by it; or
  - (b) cause such a determination to be reconsidered by a person:
    - (i) to whom its power under this section is delegated; and

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- (ii) who did not make, and who was not involved in the making of, the determination;
- whether or not an application has been made to the Administrative Appeals Tribunal under this Part in respect of a reviewable decision made in relation to the determination.
- (2) A claimant may, by written notice, request Comcare to reconsider a determination made by Comcare.
  - (3) A request for reconsideration of a determination must:
    - (a) set out the reasons for the request; and
    - (b) be given to Comcare:
      - (i) within 30 days after the day on which the determination first came to the notice of the claimant; or
      - (ii) within such further period (if any) as Comcare, either before or after the end of the 30 day period, allows.
  - (4) On receipt of a request, Comcare must:
    - (a) reconsider the determination; or
    - (b) cause the determination to be reconsidered by a person:
      - (i) to whom its power under this section is delegated; and
      - (ii) who did not make, and who was not involved in the making of, the determination.
  - (5) After a person reconsiders a determination, the person may make a decision:
    - (a) affirming the determination; or
    - (b) revoking the determination; or
    - (c) varying the determination in such manner as the person thinks fit.
  - (6) The person must decide a request made by a claimant to reconsider a determination within the period (if any) prescribed by regulations made for the purposes of subsection 62(6) of the *Safety, Rehabilitation and Compensation Act 1988*.

## **70 Reviewable decision to be notified in writing**

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

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

## **71 Applications to the Administrative Appeals Tribunal**

- (1) Applications may be made to the Administrative Appeals Tribunal for review of reviewable decisions.
- (2) An application under subsection (1) for review of a reviewable decision may only be made by the claimant.

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### **72 Modifications of the *Administrative Appeals Tribunal Act 1975***

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

### **73 Evidence in proceedings before Administrative Appeals Tribunal**

- (1) If:
  - (a) a claimant who has instituted proceedings under this Part seeks to adduce any matter in evidence before the Administrative Appeals Tribunal in those proceedings; and
  - (b) the claimant had not disclosed that matter to the Tribunal at least 28 days before the day fixed for the hearing of those proceedings;that matter is not admissible in evidence in those proceedings without the leave of the Tribunal.
- (2) If:
  - (a) Comcare has determined a claim and, before doing so, gave the claimant a notice under section 64 requesting the claimant to give Comcare information, or a copy of a document, specified in the notice; and
  - (b) the claimant failed to comply with the notice; and
  - (c) the claimant had the information or the document, or could have obtained the information or a copy of the document without unreasonable expense or inconvenience before the determination was made;the information, document or copy is not, without leave of the Administrative Appeals Tribunal, admissible in proceedings instituted under this Part in relation to the determination.
- (3) The Administrative Appeals Tribunal must not give leave under subsection (2) unless:
  - (a) the claimant provides a statement of reasons why he or she failed to comply with the notice under section 64; and
  - (b) the Tribunal is satisfied that there are special circumstances justifying the admission of the information, document or copy in evidence.

### **74 Costs of proceedings before Administrative Appeals Tribunal**

- (1) Subject to this section, the costs incurred by a party to proceedings instituted under this Part in respect of a reviewable decision are to be borne by that party.
- (2) Subject to this section, if a proceeding instituted under this Part in respect of a reviewable decision relating to a determination is rendered abortive because a decision has been made, following a reconsideration under subsection 69(1), varying or revoking the determination, the Commonwealth is liable to reimburse

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the claimant for costs reasonably incurred by the claimant in connection with that proceeding.

- (3) If:
- (a) Comcare has determined a claim (the ***original determination***); and
  - (b) Comcare, before making the original determination, gave the claimant a notice under section 64 requesting the claimant to give it the information specified in the notice (the ***relevant information***); and
  - (c) the claimant failed to comply with the notice; and
  - (d) at the time when Comcare determined the claim:
    - (i) it did not have the relevant information; and
    - (ii) the relevant information was not reasonably available to it; and
  - (e) after the claim was determined, the claimant disclosed the relevant information to Comcare or to the Administrative Appeals Tribunal; and
  - (f) Comcare reconsidered the original determination under subsection 69(1) and made a determination more favourable to the claimant than the original determination; and
  - (g) Comcare is satisfied that, if it had had the relevant information at the time when the original determination was made, it would have made a determination more favourable to the claimant than the original determination; and
  - (h) the Commonwealth would, but for subsection (5), be liable under subsection (2) to reimburse the claimant for costs reasonably incurred by the claimant;

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

- (4) If:
- (a) Comcare has determined a claim (the ***original determination***); and
  - (b) Comcare, before making the original determination, gave the claimant a notice under section 64 requesting the claimant to give it a copy of a document specified in the notice (the ***relevant document***); and
  - (c) the claimant failed to comply with the notice; and
  - (d) at the time when Comcare determined the claim:
    - (i) it did not have the information contained in the relevant document; and
    - (ii) the information was not reasonably available to it; and
  - (e) after the claim was determined, the claimant gave the relevant document, a copy of the relevant document, or the information contained in the relevant document, to Comcare or to the Administrative Appeals Tribunal; and
  - (f) Comcare reconsidered the original determination under subsection 69(1), and made a determination more favourable to the claimant than the original determination; and
  - (g) Comcare is satisfied that, if it had had the information contained in the relevant document at the time when the original determination was made, it would have made a determination more favourable to the claimant than the original determination; and

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(h) the Commonwealth would, but for subsection (5), be liable, under subsection (2), to reimburse the claimant for costs reasonably incurred by the claimant;

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

- (5) If Comcare makes a declaration under subsection (3) or (4) that subsection (2) does not apply in relation to costs incurred by a claimant, subsection (2) does not apply in relation to those costs.
- (6) Comcare must give a copy of a declaration made by it under subsection (3) or (4) to the claimant.
- (7) Applications may be made to the Administrative Appeals Tribunal for review of decisions of Comcare under subsection (3) or (4) to make a declaration.
- (8) If, in any proceedings instituted by a claimant, the Administrative Appeals Tribunal makes a decision:
- (a) varying a reviewable decision in a manner favourable to the claimant; or
  - (b) setting aside a reviewable decision and making a decision in substitution for the reviewable decision that is more favourable to the claimant than the reviewable decision;
- the Tribunal may, subject to this section, order that the costs of those proceedings incurred by the claimant, or a part of those costs, are to be paid by the Commonwealth.
- (9) If the Administrative Appeals Tribunal makes a decision setting aside a reviewable decision and remitting the case for redetermination by Comcare, the Tribunal must, subject to this section, order that the costs of the proceedings before it incurred by the claimant are to be paid by the Commonwealth.
- (10) Nothing in subsection (8) or (9) authorises the Administrative Appeals Tribunal to order the Commonwealth to pay any costs incurred by a claimant in relation to an application for an extension of time for applying to the Tribunal for a review of a reviewable decision.
- (11) If, in any proceedings, the Administrative Appeals Tribunal varies or sets aside a reviewable decision, the Tribunal must not make an order under subsection (8) or (9) in favour of a claimant in relation to the costs of those proceedings if:
- (a) Comcare, before making the reviewable decision, gave the claimant a notice under section 64 requesting the claimant to give Comcare information specified in the notice (the **relevant information**); and
  - (b) the Tribunal is satisfied that:
    - (i) the claimant failed to comply with that notice; and
    - (ii) at the time when Comcare made the reviewable decision, it did not have the relevant information and the relevant information was not reasonably available to it; and
    - (iii) if Comcare had had the relevant information at the time when it made the reviewable decision it would have made a decision more favourable to the claimant than the reviewable decision.

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- (12) If, in any proceedings, the Administrative Appeals Tribunal varies or sets aside a reviewable decision, the Tribunal must not make an order under subsection (8) or (9) in favour of a claimant in relation to the costs of those proceedings if:
- (a) Comcare, before making the reviewable decision, gave the claimant a notice under section 64 requesting the claimant to give Comcare a copy of the document specified in the notice (the *relevant document*); and
  - (b) the Tribunal is satisfied that:
    - (i) the claimant failed to comply with that notice; and
    - (ii) at the time when Comcare made the reviewable decision, it did not have the information contained in the relevant document and that information was not reasonably available to it; and
    - (iii) if Comcare had had the information contained in the relevant document at the time when it made the reviewable decision it would have made a decision more favourable to the claimant than the reviewable decision.
- (13) If the Administrative Appeals Tribunal orders the Commonwealth to pay costs incurred by a claimant, the Tribunal may, in the absence of agreement between the claimant and Comcare as to the amount of the costs, tax or settle the amount of the costs or order that the costs be taxed by an officer of the Tribunal (within the meaning of the *Administrative Appeals Tribunal Act 1975*).
- (14) For the purposes of section 69A of the *Administrative Appeals Tribunal Act 1975*, the Commonwealth is taken to be a party to the proceeding before the Administrative Appeals Tribunal.

## Part 7—Administration

### 75 Functions

Subject to this instrument, Comcare has the following functions (in addition to its other functions under the scheme and under the *Safety, Rehabilitation and Compensation Act 1988* and other Acts):

- (a) to make determinations accurately and quickly in relation to claims and requests made to Comcare under the scheme;
- (b) to make payments under the scheme on behalf of the Commonwealth;
- (c) to publish material relating to the function referred to in paragraph (a);
- (d) in respect of actions for non-economic loss—to take over the conduct of such actions under section 57 on behalf of the Commonwealth or covered persons against whom such actions were taken.

Note 1: See also section 69 of the *Safety, Rehabilitation and Compensation Act 1988*.

Note 2: See section 70 of the *Safety, Rehabilitation and Compensation Act 1988* for powers relating to these functions.

### 76 Power to obtain information from Commonwealth entities

- (1) Comcare may, by notice in writing, require 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:
  - (a) in the possession, custody or control of the Commonwealth entity; and
  - (b) relevant to a claim made by, or in relation to, a covered person.
- (2) The principal officer must comply with the notice.

### 77 Manner in which claims are to be determined

In performing the function referred to in paragraph 75(a), Comcare:

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



## **Part 8—Miscellaneous**

### **78 Determinations to be in writing**

- (1) A determination under this instrument must be in writing.
- (2) A determination is taken to be in writing if it is entered into, or recorded with the use of, a computer.

### **79 Money paid to Comcare for benefit of person**

- (1) If any money is payable under the scheme to a person who is under a legal disability, the money is to be paid to, or in accordance with the directions of, Comcare for the benefit of the person and, when so paid, is, for the purposes of this instrument other than this section, taken to have been paid to the person.
- (2) If money is held by Comcare for the benefit of a person, Comcare must, subject to subsections (3) and (4), invest the money in any manner for the time being allowed by an Act, a State Act or an Ordinance of a Territory for the investment of trust money and income resulting from any such investment is taken to form part of the first-mentioned money.
- (3) Comcare may pay any money referred to in subsection (2) to, or in accordance with the directions of, the person or apply the money in such manner as it thinks fit, for the benefit of the person.
- (4) If:
  - (a) money is held by Comcare for the benefit of a person who is under a legal disability; and
  - (b) the person ceases to be under a legal disability;Comcare must:
  - (c) pay the money to, or in accordance with the directions of, the person; or
  - (d) if the money has been invested—deal with the investments in accordance with the directions of the person.

### **80 Provisions applicable on death of beneficiary**

- (1) Subject to this section, if a determination is made that an amount of compensation is payable under the scheme to a person and the person dies before the amount is paid, the amount forms part of the estate of the person.
- (2) Subject to subsections (3), (4) and (5), if Comcare holds any money or investments for the benefit of a person under this instrument and the person dies, that money or those investments form part of the estate of the person.
- (3) If a person referred to in subsection (1) dies intestate and there is no other person apparently entitled to claim the estate (including that amount of compensation) of the person, subsection (1) does not apply and, subject to subsection (5), if the amount of compensation is held by Comcare, Comcare must pay the amount to the Commonwealth.

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- (4) If a person referred to in subsection (2) dies intestate and there is no other person apparently entitled to claim the estate (including that money or those investments) of the person, subsection (2) does not apply and, subject to subsection (5), Comcare must pay the money, or realise the investments and pay the proceeds of the realisation, as the case may be, to the Commonwealth.
- (5) Nothing in this section prevents Comcare from rendering any provision of this section inoperative in a particular case by making a decision under section 69.

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

- (1) An assignment of any compensation payable under the scheme is void as against the Commonwealth or Comcare.
- (2) Except as provided by this instrument, an amount payable by a covered person or a dependant of a deceased covered person to the Commonwealth or Comcare must not be set off against the amount of any compensation payable under the scheme to the covered person or for the benefit of the dependant.
- (3) Except as provided by the *Child Support (Registration and Collection) Act 1988* or the *Social Security Act 1991*, or by, or by regulations under, the *Family Law Act 1975*, any compensation payable under the scheme is not subject to attachment.

### 82 Recovery of amounts due to the Commonwealth

If:

- (a) a person (the *debtor*) is liable to pay an amount to the Commonwealth under this instrument; and
- (b) Comcare holds on behalf of the debtor:
  - (i) money, being compensation payable under this scheme for the benefit of the debtor; or
  - (ii) investments acquired out of money of a kind referred to in subparagraph (i);

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

### 83 Recovery of overpayments

- (1) Subject to subsection (2), if:
  - (a) an amount of compensation under the scheme has been paid to a person in consequence of a false or misleading statement or representation or in consequence of a failure or omission to comply with a provision of this instrument; or
  - (b) an amount of compensation that has been paid to a person under the scheme should not have been paid; or
  - (c) a person is liable to pay an amount to the Commonwealth under this instrument;

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

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

#### **84 Notice to Comcare of ceasing to be a member etc.**

If:

- (a) a covered person is receiving, or is entitled to receive, compensation under the scheme; and
- (b) the covered person ceases to be a member or retires from his or her employment;

then, as soon as practicable, the covered person must give written notice to Comcare stating:

- (c) that the covered person has so ceased or retired; and
- (d) the date of the cessation or retirement; and
- (e) identifying the superannuation scheme of which the covered person was a member at the time of the cessation or retirement.

#### **85 Power to obtain information from administrators of superannuation schemes**

(1) If:

- (a) a covered person ceases to be a member and is, or may be, entitled to a pension or a lump sum benefit, or both a pension and a lump sum benefit, under a superannuation scheme as a result of ceasing to be a member; or
- (b) a covered person:
  - (i) retires from his or her employment (whether the covered person retires voluntarily or is compulsorily retired); and
  - (ii) is, or may be, entitled to a pension or a lump sum benefit, or both a pension and a lump sum benefit, under a superannuation scheme as a result of the covered person's retirement;

the following provisions of this section apply if Comcare is of the opinion that it may pay, or may have paid, to the covered person an amount or amounts of compensation under the scheme in excess of the amount or amounts that he or she was entitled to receive because of section 31, 32 or 33.

- (2) Comcare may give written notice to the administrator of the superannuation scheme:
- (a) stating that Comcare may make, or may have made, an overpayment of compensation to the covered person; and
  - (b) requiring the administrator to tell Comcare whether the covered person has received any payment in respect of his or her entitlement referred to in subsection (1) or whether all the covered person's benefits under the superannuation scheme have been deferred; and
  - (c) requiring the administrator, if the covered person has not received any such payment (unless all the covered person's benefits under the superannuation scheme have been deferred), to give Comcare, as soon as practicable, particulars of the rate of pension, or the lump sum worked out as at the date

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of cessation or retirement, or the rate of pension and the lump sum as so worked out, as the case may be, that is payable to the covered person under the superannuation scheme.

- (3) The administrator of the superannuation scheme must comply with the notice.
- (4) Comcare must give the covered person a written notice stating that it has given a notice to the administrator of the superannuation scheme under subsection (2) and explaining how this section works.
- (5) The following provisions apply if the covered person has not received any payment in respect of his or her entitlement referred to in subsection (1) but do not apply if all the covered person's benefits under the superannuation scheme have been deferred.
- (6) When Comcare receives from the administrator of the superannuation scheme particulars of the rate of pension, or the lump sum, or the rate of pension and the lump sum, payable to the covered person, Comcare must, within 2 working days after receiving those particulars:
  - (a) determine whether an overpayment of compensation to the covered person has occurred; and
  - (b) give written notice to the covered person:
    - (i) if it determines that no overpayment has occurred—stating that fact; or
    - (ii) otherwise—stating the amount of the overpayment and that the covered person is required to pay that amount to the Commonwealth.
- (7) The amount to be stated in the notice under subparagraph (6)(b)(ii) is the amount by which the sum of the amounts of any compensation paid after the cessation or retirement referred to in subsection (1) exceeds the sum of the amounts of compensation that should have been paid because of section 31, 32 or 33, as the case requires.
- (8) If an amount is stated in the notice in accordance with subparagraph (6)(b)(ii), the covered person is liable to pay the amount to the Commonwealth.
- (9) Comcare must not reduce the rate or amount of compensation payable to the covered person under the scheme until it has given the covered person the notice referred to in subsection (6).
- (10) In this section:

**working day**, in relation to a notice to be given by Comcare, means a day other than a Saturday, a Sunday, or a day that is a public holiday in any State or Territory.

### 86 Comcare may write off debt

- (1) Comcare may decide, in writing, to write off a debt due to the Commonwealth under this instrument.
- (2) A decision made under subsection (1) takes effect:

- (a) if no day is set out in the decision—on the day on which the decision is made; or
- (b) if a day is set out in the decision—on the day so set out (whether that day is before, on, or after, the day on which the decision is made).

Note: If Comcare writes off a debt, this means an administrative decision has been made that, in the circumstances, there is no point in trying to recover the debt. In law, however, the debt still exists and may later be pursued.

### **87 Comcare may waive debt**

- (1) Comcare may decide, in writing, to waive its right to recover from a person the whole or a part of a debt due to the Commonwealth under this instrument.
- (2) A decision of Comcare under subsection (1) takes effect:
  - (a) if no day is set out in the decision—on the day on which the decision is made; or
  - (b) if a day is set out in the decision—on the day so set out (whether that day is before, on, or after the day on which the decision is made).

Note: If Comcare waives its rights to recover, this is a permanent bar to recovery of the debt—the debt effectively ceases to exist.

### **88 Compensation where State compensation payable**

- (1) If:
  - (a) a covered person recovers State compensation in respect of an injury to the covered person or in respect of the loss of, or damage to, property used by the covered person; or
  - (b) State compensation is recovered by, or for the benefit of, a dependant of a deceased covered person;
 the following provisions of this section have effect.
- (2) Subject to this section, the compensation that is payable under this scheme to the covered person in respect of the injury, loss or damage, or for the benefit of the dependant in respect of the injury that resulted in the death, as the case may be, is so much (if any) of the compensation under this scheme that, but for this section, would be so payable as exceeds the amount of State compensation recovered by the covered person or by, or for the benefit of, the dependant, as the case may be.
- (3) Subject to this section, if, before the recovery of State compensation by or for the benefit of the covered person or dependant, compensation under this scheme was paid to the covered person by Comcare in respect of the injury, loss or damage, or for the benefit of the dependant in respect of the injury that resulted in the death, as the case may be, the covered person or dependant is liable to pay to the Commonwealth:
  - (a) the amount of the compensation paid by it under this scheme; or
  - (b) the amount of the State compensation recovered by the covered person or for the benefit of the dependant;
 whichever is less.
- (4) If:

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

the other person must:

- (c) deduct from the money so held, or realise those investments so held and deduct from the proceeds of the realisation, an amount not exceeding the amount referred to in paragraph (a); and
- (d) pay the amount so deducted to the Commonwealth;

and the payment of that amount is, to the extent of the amount paid, a discharge of the liability of the debtor to the Commonwealth and of the other person to the debtor.

- (5) A reference in subsection (3) to compensation under this scheme that was paid for the benefit of a dependant does not include a reference to compensation paid under subsection 26(5).
- (6) If a covered person, or a dependant of a covered person, establishes, to the satisfaction of Comcare, that the whole or part of the State compensation referred to in subsection (2) recovered by the covered person or by, or on behalf of, the dependant, as the case may be, did not relate to an injury, loss or damage, in respect of which compensation is payable under this scheme, this section has effect in relation to that covered person or that dependant, as the case may be, as if the amount of the State compensation recovered by that covered person or that dependant were an amount equal to so much (if any) of the amount of the specified compensation as did relate to an injury, loss or damage, in respect of which compensation is payable under this scheme to that covered person or that dependant, as the case may be.
- (7) In this section:

*State compensation* means compensation recoverable under a specified law (within the meaning of section 119 of the *Safety, Rehabilitation and Compensation Act 1988*).

### 89 Notice of departure from Australia etc.

- (1) This section applies to a person to whom payments of compensation under any of sections 28 to 30 are being made, and have been made for a total period of 3 months or longer, by Comcare.
- (2) If the person proposes to leave Australia (whether or not the person proposes to return to Australia), the person may give Comcare a notice in writing:
  - (a) stating that the person proposes to leave Australia; and
  - (b) specifying the day on which the person proposes to leave.
- (3) If the person has left Australia (whether or not the person proposes to return to Australia) without giving a notice of the kind referred to in subsection (2) to

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Comcare, the person must, within 7 days after the day on which the person left Australia, give Comcare a notice in writing:

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

- (4) If the person is absent from Australia for a period of more than 3 months, the person must:
- (a) within 7 days after the expiration of the period of 3 months commencing on the day on which the person left Australia; and
  - (b) within 7 days after the expiration of each successive period of 3 months (if any) ending while the person is still absent from Australia;
- give Comcare a notice in writing setting out particulars of the residential address of the person on the day on which the notice is given.
- (5) A person commits an offence of strict liability if:
- (a) the person is subject to a requirement under subsection (3) or (4); and
  - (b) the person omits to do an act; and
  - (c) the omission breaches the requirement.

Penalty: 5 penalty units.