Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

No. 156, 1988

Compilation No. 7

Compilation date:	6 April 2019
Includes amendments up to:	Act No. 42, 2019
Registered:	1 May 2019

Prepared by the Office of Parliamentary Counsel, Canberra

Authorised Version C2019C00166 registered 01/05/2019

About this compilation

This compilation

This is a compilation of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* that shows the text of the law as amended and in force on 6 April 2019 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part I—Preliminary 1

1 Short title ... 1
2 Commencement ... 1
3 Application of Act ... 2
3A Secretary may arrange for use of computer programs to make decisions or determinations ... 2
4 Interpretation ... 3
4AA Application of this Act ... 16
5 Employees ... 18
5A Definition of *injury* ... 20
5B Definition of *disease* ... 21
6 Injury arising out of or in the course of employment ... 22
6A Injury arising out of or in the course of employment—extended operation ... 25
7 Provisions relating to diseases ... 26
8 Normal weekly earnings ... 29
9 Relevant period ... 34
10 Recovery of damages ... 35
11 Liability of relevant authority ... 35
12 Amounts of compensation ... 36
13 Indexation—Consumer Price Index ... 36
13AA Indexation—Wage Price Index ... 37
13A Application of *Criminal Code* ... 39

Part II—Compensation 40

Division 1—Injuries, property loss or damage, medical expenses 40

14 Compensation for injuries ... 40
15 Compensation for loss of or damage to property used by employee ... 40
16 Compensation in respect of medical expenses etc. ... 41

Division 2—Injuries resulting in death 45

17 Compensation for injuries resulting in death ... 45
18 Compensation in respect of funeral expenses ... 47

Division 3—Injuries resulting in incapacity for work 48

19 Compensation for injuries resulting in incapacity ... 48
20 Compensation for injuries resulting in incapacity where employee is in receipt of a superannuation pension ... 55

Authorised Version C2019C00166 registered 01/05/2019

21 Compensation for injuries resulting in incapacity where employee is in receipt of a lump sum benefit 56
21A Compensation for injuries resulting in incapacity if employee is in receipt of a superannuation pension and a lump sum benefit 58
22 Compensation where employee is maintained in a hospital 59
23 Compensation for incapacity not payable in certain cases 60

Division 4—Injuries resulting in impairment 62
24 Compensation for injuries resulting in permanent impairment 62
25 Interim payment of compensation 63
26 Payment of compensation 64
27 Compensation for non-economic loss 65
28 Approved Guide 66

Division 5—Household and attendant care services 68
29 Compensation for household services and attendant care services obtained as a result of a non-catastrophic injury 68
29A Compensation for household services and attendant care services obtained as a result of a catastrophic injury 70

Division 6—Miscellaneous 73
30 Redemption of compensation 73
31 Recurrent payments after payment of lump sum 74
32 Cancelled determinations not to affect certain payments of compensation 74
33 Reduction of compensation in certain cases 75

Part III—Rehabilitation 77
36 Assessment of capability of undertaking rehabilitation program 77
37 Provision of rehabilitation programs 79
38 Review of certain determinations by the MRCC 82
39 Compensation payable in respect of certain alterations etc. 82
40 Duty to provide suitable employment 84
40A Scheme may provide for payments to employers 84
41 Rehabilitation authorities to comply with guidelines 85
41A Delegation by rehabilitation authority 85

Part IV—Liabilities arising apart from this Act 86
42 Interpretation 86
43 Certain persons may request cessation of compensation payments 86

Authorised Version C2019C00166 registered 01/05/2019

44 Action for damages not to lie against Commonwealth etc. in certain cases ... 87
45 Actions for damages—election by employees ... 88
46 Notice of common law claims against third party ... 89
47 Notice of common law claims against Commonwealth ... 90
48 Compensation not payable where damages recovered ... 90
49 Dependants not claiming compensation ... 92
50 Common law claims against third parties ... 94
51 Payment of damages by persons to the Commonwealth ... 97
52 Compensation not payable both under Act and under award ... 99
52A The Commonwealth's rights and obligations in respect of certain action for non-economic loss ... 100

Part V—Claims for compensation 103
53 Notice of injury or loss of, or damage to, property ... 103
54 Claims for compensation ... 104
55 Survival of claims ... 104
56 Claims may not be made in certain cases ... 105
57 Power to require medical examination ... 105
58 Power to request the provision of information ... 106
59 Certain documents to be supplied on request ... 107

Part VI—Reconsideration and review of determinations 108
60 Interpretation ... 108
61 Determinations to be notified in writing ... 108
62 Reconsideration of determinations ... 109
63 Reviewable decision to be notified in writing ... 110
64 Applications to the Administrative Appeals Tribunal ... 110
65 Modifications of the *Administrative Appeals Tribunal Act 1975* ... 111
66 Evidence in proceedings before Administrative Appeals Tribunal ... 111
67 Costs of proceedings before Administrative Appeals Tribunal ... 112

Part IX—Miscellaneous 117
109A Jurisdiction of courts with respect to extraterritorial offences ... 117
109 Determinations to be in writing ... 117
110 Money paid to relevant authority for benefit of person ... 117
111 Provisions applicable on death of beneficiary ... 118
112 Assignment, set-off or attachment of compensation ... 119

Authorised Version C2019C00166 registered 01/05/2019

112A Making of compensation payments through employers of employees paid out of relevant money 119
112B Making of compensation payments through employers of employees not paid out of relevant money 121
113 Recovery of amounts due to the Commonwealth 121
114 Recovery of overpayments 122
114A Notice to the MRCC of retirement of employee 122
114B Recovery of overpayment to retired employee 123
114C The MRCC may write off debt 126
114D The MRCC may waive debt 127
115 Deduction of overpayments of repatriation pensions 127
116 Employees on compensation leave 129
118 Double benefits 130
119 Compensation where State compensation payable 131
120 Notice of departure from Australia etc. 133
121B Regulations modifying the operation of this Act 134
122 Regulations 134
122A Legislative rules 134

Part X—Transitional provisions 136

Division 1—Preliminary 136

123 Interpretation 136
123A Injuries suffered before the commencing day 137

Division 2—Transitional provisions 138

124 Application of Act to pre-existing injuries 138
125 Payments under previous Acts 142
126 Notices, claims etc. under previous Acts 142
127 Settlements and determinations under previous Acts 143
128 Liability under previous Acts 144
129 Application for review and other proceedings under previous Acts 144
129A Reconsideration and review of certain determinations under 1971 Act 145
130 Money and investments held under 1971 Act 145

Division 3—Special transitional provisions relating to certain former employees 147

131 Former employees under 65 who are in receipt of superannuation benefits and are unable to engage in any work 147

Authorised Version C2019C00166 registered 01/05/2019

132 Former employees under 65 who are not in receipt of superannuation benefits and are unable to engage in any work 148
132A Former employees under 65 who are capable of engaging in any work 149
133 Minimum benefit payable 151
134 Reduction of compensation on reaching pension age 151
135 Former employees 65 and over who are in receipt of superannuation benefits 152
136 Former employees 65 and over who are not in receipt of superannuation benefits 152
137 Redemption on request by former employee 152

Part XI—Operation of this Act in relation to certain defence-related injuries and deaths etc. 155

Division 1—Preliminary 155
140 Simplified outline of this Part 155
141 Definitions 155

Division 2—Management of defence-related claims 157
142 Functions of MRCC 157
143 Giving copies of defence-related claims etc. 157
144 Provisions relating to management of claims etc. 157

Division 2A—Treatment of certain defence-related injuries 161
144A Persons entitled to treatment under other legislation not entitled to certain compensation 161
144B Treatment of certain defence-related injuries to be provided under the MRCA or the *Veterans' Entitlements Act 1986* 162
144C Exceptional circumstances determination 164

Division 3—Administrative matters 166
145 Relevant authority 166
146 Rehabilitation authority etc. 166
147 Notice to the Chief of the Defence Force 166
148 Rehabilitation programs 167
149 Directions by Minister 167
151 MRCC may obtain information etc. 167
151AA Self-incrimination 169
151A Giving information 169
152 Delegation 172

Authorised Version C2019C00166 registered 01/05/2019

154 Settlements and determinations etc. under the 1912 Act, the 1930 Act or the 1971 Act 172

Division 5—Modifications relating to Comcare and Defence Department for employees who are engaged in defence service 174

157 Application of certain provisions to Defence Department 174

Division 6—Appropriation 175

160 Appropriation 175

Division 7—Annual report 176

161 Annual report 176

Endnotes 177

Endnote 1—About the endnotes 177

Endnote 2—Abbreviation key 179

Endnote 3—Legislation history 180

Endnote 4—Amendment history 182

Authorised Version C2019C00166 registered 01/05/2019

An Act relating to the rehabilitation and treatment of, and compensation for, members of the Defence Force, and for related purposes

Part I—Preliminary

1 Short title

This Act may be cited as the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

2 Commencement

(1) Each provision of this Act 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 Act	12 October 2017.	12 October 2017

Note 1: 12 October 2017 was 28 days after the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017* received the Royal Assent (see section 2 of and Schedule 1 to that Act).

Note 2: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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

Authorised Version C2019C00166 registered 01/05/2019

3 Application of Act

This Act extends to all places outside Australia, including the external Territories.

3A Secretary may arrange for use of computer programs to make decisions or determinations

(1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which the MRCC may, or must, under this Act or a legislative instrument made for the purposes of this Act:

(a) make a decision or determination; or

(b) exercise any power or comply with any obligation; or

(c) do anything else related to making a decision or determination or exercising a power or complying with an obligation.

(1A) Subsection (1) does not apply to the following:

(a) a decision or determination that a disease suffered by an employee was not contributed to, to a significant degree, by the employee's employment by the Commonwealth or a licensee;

(b) a decision or determination that an injury (other than a disease) to an employee did not arise out of, or in the course of, his or her employment;

(c) a decision or determination that an aggravation of an injury (other than a disease) suffered by an employee is not an aggravation that arose out of, or in the course of, his or her employment.

(2) For the purposes of this Act or the legislative instrument, the MRCC is taken to have:

(a) made a decision or determination; or

(b) exercised a power or complied with an obligation; or

Authorised Version C2019C00166 registered 01/05/2019

(c) done something else related to the making of a decision or determination or the exercise of a power or the compliance with an obligation;

that was made, exercised, complied with or done by the operation of a computer program under an arrangement made under subsection (1).

Substituted decisions or determinations

(3) The MRCC may, under a provision of this Act or of the legislative instrument, make a decision or determination in substitution for a decision or determination the MRCC is taken to have made under paragraph (2)(a) if the MRCC is satisfied that the decision or determination made by the operation of the computer program is incorrect.

Note: For review of a decision or determination made in substitution, see Part VI.

(4) Subsection (3) does not limit Part VI (about reconsideration and review of determinations).

4 Interpretation

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

action for non-economic loss means any action (whether or not it involves the formal institution of a proceeding) to recover an amount for damages for non-economic loss sustained by an employee as a result of an injury suffered by that employee:

(a) that is taken by the employee against the employer, whether it is the Commonwealth, a Commonwealth authority or a licensed corporation, or against another employee; and

(b) that follows an election made by the first-mentioned employee under subsection 45(1).

aggravation includes acceleration or recurrence.

Authorised Version C2019C00166 registered 01/05/2019

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

approved Guide means:

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

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

approved program provider has the same meaning as in section 41 of the MRCA.

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

catastrophic injury means an injury, where the conditions specified in the legislative rules are satisfied.

child: without limiting who is a child of a person for the purposes of this Act, 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*.

claim means a claim under Part V.

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

Comcare means the body corporate established by section 68 of the SRC Act.

Commonwealth authority means:

(a) a body corporate that is incorporated for a public purpose by a law of the Commonwealth, other than a body declared by the Minister, by legislative instrument, to be a body corporate to which this Act does not apply; or

Authorised Version C2019C00166 registered 01/05/2019

(b) a body corporate that is incorporated for a public purpose by a law of a Territory (other than a law of the Australian Capital Territory or the Northern Territory) and is declared by the Minister, by legislative instrument, to be a body corporate to which this Act applies; or

(c) a body corporate:

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

(ii) in which:

(A) the Commonwealth has a controlling or substantial interest; or

(B) a Territory (other than the Australian Capital Territory or the Northern Territory) or a body corporate referred to in paragraph (a) or (b) has a controlling interest; and

(iii) that is declared by the Minister, by legislative instrument, to be a body corporate to which this Act applies; or

(d) a body corporate:

(i) in which a body corporate declared under paragraph (c) has a controlling interest; and

(ii) that is declared by the Minister, by legislative instrument, to be a body corporate to which this Act applies.

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

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

(a) control the composition of the board of directors of the body corporate; or

Authorised Version C2019C00166 registered 01/05/2019

(b) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the body corporate; or

(c) control more than one-half of the issued share capital of the body corporate (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

CTPA means the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*.

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*.

Defence Department has the meaning given by the MRCA.

dependant, in relation to a deceased employee, means:

(a) the spouse, parent, step-parent, father-in-law, mother-in-law, grandparent, child, stepchild, grandchild, sibling or half-sibling of the employee; or

(b) a person in relation to whom the employee stood in the position of a parent or who stood in the position of a parent to the employee;

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

Note: See also subsection 4(2).

dependent means dependent for economic support.

disease has the meaning given by section 5B.

employee has the meaning given in section 5.

Authorised Version C2019C00166 registered 01/05/2019

Entity means:

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

(b) a Parliamentary Department within the meaning of the *Parliamentary Service Act 1999*; or

(c) a person, body, organisation or group of persons prescribed for this paragraph.

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

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

injury has the meaning given by section 5A.

legislative rules means rules made under section 122A.

loss, in relation to property used by an employee, includes the destruction of that property.

medical treatment means:

(a) medical or surgical treatment by, or under the supervision of, a legally qualified medical practitioner; or

(b) therapeutic treatment obtained at the direction of a legally qualified medical practitioner; or

(c) dental treatment by, or under the supervision of, a legally qualified dentist; or

(d) therapeutic treatment by, or under the supervision of, a physiotherapist, osteopath, masseur or chiropractor registered under the law of a State or Territory providing for the registration of physiotherapists, osteopaths, masseurs or chiropractors, as the case may be; or

(e) an examination, test or analysis carried out on, or in relation to, an employee at the request or direction of a legally

Authorised Version C2019C00166 registered 01/05/2019

qualified medical practitioner or dentist and the provision of a report in respect of such an examination, test or analysis; or

(f) the supply, replacement or repair of an artificial limb or other artificial substitute or of a medical, surgical or other similar aid or appliance; or

(g) treatment and maintenance as a patient at a hospital; or

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

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

MRCA means the *Military Rehabilitation and Compensation Act 2004*.

MRCA commencement date means the date on which section 3 of the MRCA commences.

MRCC means the Military Rehabilitation and Compensation Commission.

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

normal weekly earnings means the normal weekly earnings of an employee calculated under section 8.

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

overtime includes:

Authorised Version C2019C00166 registered 01/05/2019

(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 Act, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this section.

pension age has the meaning given by subsection 23(5A), (5B), (5C) or (5D) of the *Social Security Act 1991*.

permanent means likely to continue indefinitely.

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

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

pre-determination period, in relation to a claim by an employee for compensation under Division 3 of Part II, means the period from the start of the day when the employee is injured until the end of the day on which the MRCC determines the claim.

prescribed child means:
(a) a person under 16; or
(b) a person who:
(i) is 16 or more but under 25;

Authorised Version C2019C00166 registered 01/05/2019

(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.

principal officer, in relation to a Commonwealth authority, means:

(a) the person who constitutes, or is acting as the person who constitutes, the authority or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which he or she is present; or

(b) if the affairs of the authority are administered or managed by a board or other group of persons—the person who is entitled to preside at any meeting of that board or other group at which he or she is present.

principal officer, in relation to an Entity, means:

(a) if the Entity is an Agency that is not a Commonwealth authority—the Agency Head within the meaning of the *Public Service Act 1999*; or

(b) if the Entity is a Parliamentary Department—the Secretary of the Parliamentary Department within the meaning of the *Parliamentary Service Act 1999*; or

(c) if the Entity is a person, body, organisation or group of persons prescribed for paragraph (c) of the definition of ***Entity***—the person prescribed as the principal officer.

proceeding under Part VI has the meaning given in subsection (12).

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

rehabilitation authority, in relation to an employee and a defence-related claim, means the rehabilitation authority applicable under subsection 39(3) of the MRCA.

rehabilitation program includes medical, dental, psychiatric and hospital services (whether on an in-patient or out-patient basis),

Authorised Version C2019C00166 registered 01/05/2019

physical training and exercise, physiotherapy, occupational therapy and vocational training.

relevant authority means:

(a) in relation to an employee by whom or in respect of whom a defence-related claim has been made, and in relation to dependants of the employee—the MRCC; or

(b) in relation to liability to pay an amount, a debt being due or the receipt of an amount—the Commonwealth.

relevant money has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

relevant period means the period calculated under section 9.

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

Secretary means Secretary of the Department.

significant degree has the meaning given by subsection 5B(3).

spouse includes:

(a) in relation to an employee or a deceased employee—a person who is, or immediately before the employee's death was, a de facto partner of the employee; and

(b) in relation to an employee or a deceased employee who is or was a member of the Aboriginal race of Australia or a descendant of indigenous inhabitants of the Torres Strait Islands—a person who is or was recognised as the employee's husband, wife or spouse by the custom prevailing in the tribe or group to which the employee belongs or belonged.

SRC Act means the *Safety, Rehabilitation and Compensation Act 1988*.

stepchild: without limiting who is a stepchild of a person for the purposes of this Act, 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

Authorised Version C2019C00166 registered 01/05/2019

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 Act, 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.

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

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

(a) in the case of an employee who was a permanent employee of the Commonwealth on the day on which he or she was injured and who continues to be so employed—employment by the Commonwealth in work for which the employee is suited having regard to:
  (i) the employee's age, experience, training, language and other skills;
  (ii) the employee's suitability for rehabilitation or vocational retraining;
  (iii) where employment is available in a place that would require the employee to change his or her place of residence—whether it is reasonable to expect the employee to change his or her place of residence; and
  (iv) any other relevant matter; and

(b) in any other case—any employment (including self-employment), having regard to the matters specified in subparagraphs (a)(i), (ii), (iii) and (iv).

Authorised Version C2019C00166 registered 01/05/2019

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

(a) if the scheme identifies a part of the pension or lump sum as attributable to the contributions made under the scheme by the Commonwealth, Commonwealth authority or licensed corporation—the amount of that part; or

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

superannuation scheme means any superannuation scheme under which, or retirement savings account to which, the Commonwealth, a Commonwealth authority or a licensed corporation makes contributions on behalf of employees and includes a superannuation or provident scheme established or maintained by the Commonwealth, a Commonwealth authority or a licensed corporation.

the 1912 Act means the *Commonwealth Workmen's Compensation Act 1912*.

the 1930 Act means the *Commonwealth Employees' Compensation Act 1930*.

the 1971 Act means the *Compensation (Commonwealth Government Employees) Act 1971*.

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

(2) For the purposes of this Act, relationships (including the relationship of being family or being relatives) are taken to include (without limitation):

Authorised Version C2019C00166 registered 01/05/2019

(a) relationships between de facto partners; and

(b) relationships of child and parent that arise:

(i) if someone is an exnuptial or adoptive child of a person; or

(ii) because of the definitions of ***child*** and ***parent*** in this section; and

(c) relationships traced through relationships referred to in paragraphs (a) and (b).

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

(a) compensation is payable under this Act in respect of the injury for which the medical treatment was obtained; and

(b) it was reasonable for the employee to have obtained that medical treatment in the circumstances.

Note: However, members of the Defence Force with service after the MRCA commencement date might be taken not to have suffered a physical or mental injury or ailment (see section 4AA and subsection 6A(2A)).

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

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

(a) the spouse of the employee; or

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

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

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

Authorised Version C2019C00166 registered 01/05/2019

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

(c) carer allowance under that Act; and

(d) double orphan pension under that Act;

shall not be taken into account.

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

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

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

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

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

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

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

Authorised Version C2019C00166 registered 01/05/2019

4AA Application of this Act

(1) This Act applies (subject to Part X) in relation to an injury that is not an ailment, or an aggravation of an injury that is not an ailment, suffered by an employee if:

(a) the injury or aggravation arises out of, or in the course of, the employee's employment as a member of the Defence Force; and

(b) the employment occurred:

(i) on or after the commencement of section 3 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* (which was 1 December 1988); and

(ii) before the MRCA commencement date (which was 1 July 2004), but not before and on or after, the MRCA commencement date.

Note 1: Comcare and the Safety, Rehabilitation and Compensation Commission do not have any liability in respect of injuries, losses, damage or deaths that relate to defence service (see section 4AA of the *Safety, Rehabilitation and Compensation Act 1988*).

Note 2: Compensation for members of the Defence Force is provided under the MRCA (instead of this Act) for an injury or aggravation that relates to employment that occurred after the MRCA commencement date.

Note 3: See also subsection 6A(2A) (injury arising out of or in the course of employment—extended operation).

Note 4: The *Safety, Rehabilitation and Compensation Act 1988* (which previously covered members of the Defence Force) was originally called the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*.

(2) This Act applies (subject to Part X) in relation to an ailment, or an aggravation of an ailment, suffered by an employee if:

(a) the ailment or aggravation is contributed to, to a significant degree, by the employee's employment as a member of the Defence Force; and

(b) the employment occurred:

Authorised Version C2019C00166 registered 01/05/2019

(i) on or after the commencement of section 3 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* (which was 1 December 1988); and

(ii) before the MRCA commencement date (which was 1 July 2004), but not before and on or after, the MRCA commencement date.

Note: Compensation for members of the Defence Force is provided under the MRCA (instead of this Act) for an ailment or aggravation that relates to employment that occurred after the MRCA commencement date.

(3) This Act applies (subject to Part X) in relation to loss of, or damage to, property used by an employee if:

(a) the loss or damage resulted from an accident that arose out of, and in the course of, the employee's employment as a member of the Defence Force; and

(b) the employment occurred:

(i) on or after the commencement of section 3 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* (which was 1 December 1988); and

(ii) before the MRCA commencement date (which was 1 July 2004).

Note: Compensation for members of the Defence Force is provided under the MRCA (instead of this Act) for loss or damage that relates to employment that occurred after the MRCA commencement date.

(4) This Act applies (subject to Part X), in accordance with section 6A, in relation to any injury suffered by an employee if:

(a) the injury is suffered as an unintended consequence of medical treatment received by the employee that was paid for by the Commonwealth; and

(b) the treatment was provided on or after the commencement of section 3 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* (which was 1 December 1988); and

Authorised Version C2019C00166 registered 01/05/2019

(c) section 8 of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004* does not apply in relation to the injury.

Note: Compensation for members of the Defence Force is provided under the MRCA (instead of this Act) for injuries suffered as an unintended consequence of medical treatment paid for by the Commonwealth if the treatment was provided after the MRCA commencement date.

(5) To avoid doubt, employment occurred before, and on or after, the MRCA commencement date whether the employment spanned the commencement date or occurred during separate periods before and on or after that date.

Note: Under section 203 of the *Veterans' Entitlements Act 1986*, the Minister may enter into an arrangement with a foreign country providing for the making of payments that are, or the provision of treatment or rehabilitation that is, comparable to payments or treatment or rehabilitation under this Act.

5 Employees

(1) In this Act:

employee means a member of the Defence Force.

(2) For the purposes of this Act, a person who is a member of the Defence Force is taken to be employed by the Commonwealth, and the person's employment is taken to be constituted by the person's performance of duties as such a member of the Defence Force.

Note: However, members of the Defence Force with service after the MRCA commencement date might only be entitled to compensation under the MRCA and not this Act (see section 4AA and subsection 6A(2A) of this Act).

Persons taken to be members of the Defence Force

(3) The Minister may, by legislative instrument, declare:

(a) that persons specified in the declaration, being persons who:

(i) hold an honorary rank in the Defence Force before the MRCA commencement date; or

Authorised Version C2019C00166 registered 01/05/2019

(ii) are, before the MRCA commencement date, members of a philanthropic organisation that provides services to the Defence Force; or

(iii) undertake resettlement training, before the MRCA commencement date, under an arrangement made by the Defence Force;

are, for the purposes of this Act, taken to be members of the Defence Force; and

(b) that such persons' employment is, for those purposes, taken to be constituted by the performance by those persons of such acts as are specified in the declaration;

and such a declaration has effect accordingly.

Note: Declarations in respect of these kinds of people can be made under the MRCA for service after the MRCA commencement date (see section 8 of the MRCA).

(4) The Minister may, by legislative instrument, declare:

(a) that persons specified in the declaration, being persons who, before the MRCA commencement date, engage in activities or perform acts at the request or direction, for the benefit, or under a requirement made by or under a law, of the Commonwealth in relation to the Defence Force, are, for the purposes of this Act, taken to be employed by the Commonwealth; and

(b) that such persons' employment is, for those purposes, taken to be constituted by the performance by those persons of such acts as are specified in the declaration;

and such a declaration has effect accordingly.

Former employees

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

Authorised Version C2019C00166 registered 01/05/2019

Act not to apply to certain members of the Defence Force

(6) Subject to subsections (7) and (8), this Act does not apply in relation to service of a member of the Defence Force in respect of which provision for the payment of pension is made by:

(a) the *Veterans' Entitlements Act 1986*; or

(b) the *Papua New Guinea (Members of the Forces Benefits) Act 1957*.

Note: Compensation and other benefits might also be available for a member of the Defence Force under the MRCA. Generally, an injury, disease or death that is covered by that Act would not be covered by this Act (see section 4AA and subsection 6A(2A) of this Act).

(7) Subsection (6) does not apply in relation to a veteran:

(a) who has rendered operational service on or after the day on which the *Military Compensation Act 1994* commences; and

(b) for whom provision for the payment of pension in respect of service rendered by the person is made by Part II of the *Veterans' Entitlements Act 1986*.

(8) Subsection (6) does not apply in relation to a member of the Defence Force who has rendered service in respect of which provision for the payment of pension is made by Part IV of the *Veterans' Entitlements Act 1986*.

5A Definition of *injury*

(1) In this Act:

injury means:

(a) a disease suffered by an employee; or

(b) an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee's employment; or

(c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee's

Authorised Version C2019C00166 registered 01/05/2019

employment), that is an aggravation that arose out of, or in the course of, that employment;

but does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment.

(2) For the purposes of subsection (1) and without limiting that subsection, ***reasonable administrative action*** is taken to include the following:

(a) a reasonable appraisal of the employee's performance;

(b) a reasonable counselling action (whether formal or informal) taken in respect of the employee's employment;

(c) a reasonable suspension action in respect of the employee's employment;

(d) a reasonable disciplinary action (whether formal or informal) taken in respect of the employee's employment;

(e) anything reasonable done in connection with an action mentioned in paragraph (a), (b), (c) or (d);

(f) anything reasonable done in connection with the employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in connection with his or her employment.

5B Definition of *disease*

(1) In this Act:

disease means:

(a) an ailment suffered by an employee; or

(b) an aggravation of such an ailment;

that was contributed to, to a significant degree, by the employee's employment by the Commonwealth.

(2) In determining whether an ailment or aggravation was contributed to, to a significant degree, by an employee's employment by the Commonwealth, the following matters may be taken into account:

(a) the duration of the employment;

Authorised Version C2019C00166 registered 01/05/2019

(b) the nature of, and particular tasks involved in, the employment;
(c) any predisposition of the employee to the ailment or aggravation;
(d) any activities of the employee not related to the employment;
(e) any other matters affecting the employee's health.

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

(3) In this Act:

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

6 Injury arising out of or in the course of employment

(1) Without limiting the circumstances in which an injury to an employee may be treated as having arisen out of, or in the course of, his or her employment, an injury shall, for the purposes of this Act, be treated as having so arisen if it was sustained:
(a) as a result of an act of violence that would not have occurred but for the employee's employment or the performance by the employee of the duties or functions of his or her employment; or
(b) while the employee was at the employee's place of work, for the purposes of that employment, or was temporarily absent from that place during an ordinary recess in that employment; or
(c) while the employee was temporarily absent from the employee's place of work undertaking an activity:
(i) associated with the employee's employment; or
(ii) at the direction or request of the Commonwealth; or
(d) while the employee was, at the direction or request of the Commonwealth, travelling for the purpose of that employment; or
(e) while the employee was at a place of education, except while on leave without pay, in accordance with:

Authorised Version C2019C00166 registered 01/05/2019

(i) a condition of the employee's employment by the Commonwealth; or

(ii) a request or direction of the Commonwealth; or

(iii) the approval of the Commonwealth; or

(ea) while the employee was travelling between the employee's place of work and a place of education for the purpose of attending that place in accordance with:

(i) a condition of the employee's employment by the Commonwealth; or

(ii) a request or direction of the Commonwealth; or

(iii) the approval of the Commonwealth; or

(f) while the employee was at a place for the purpose of:

(i) obtaining a medical certificate for the purposes of this Act; or

(ii) receiving medical treatment for an injury; or

(iii) undergoing a rehabilitation program provided under this Act; or

(iv) receiving a payment of compensation under this Act; or

(v) undergoing a medical examination or rehabilitation assessment in accordance with a requirement made under this Act; or

(vi) receiving money due to the employee under the terms of his or her employment, being money that, under the terms of that employment or any agreement or arrangement between the employee and the Commonwealth, is available, or reasonably expected by the employee to be available, for collection at that place; or

(g) while the employee was travelling between the employee's place of work and another place for the purpose of:

(i) obtaining a medical certificate for the purposes of this Act; or

(ii) receiving medical treatment for an injury; or

(iii) undergoing a rehabilitation program provided under this Act; or

Authorised Version C2019C00166 registered 01/05/2019

(iv) undergoing a medical examination or rehabilitation assessment in accordance with a requirement made under this Act; or

(h) while the employee was, at the direction or request of the Commonwealth, at a place:

(i) outside Australia and the external Territories; and

(ii) declared by the Minister by legislative instrument to be a place to which this paragraph applies; or

(i) while the employee was:

(i) at the direction or request of the Commonwealth, at a place outside Australia and the external Territories; and

(ii) a member of a class of employees declared by the Minister by legislative instrument to be a class to which this paragraph applies.

(1A) For the purposes of this section:

(a) a journey from a place of residence is taken to start at the boundary of the land where the place of residence is situated; or

(b) a journey to such a place of residence is taken to end at that boundary.

(1B) If an employee owns or occupies a parcel of land contiguous with the land on which the employee's residence is situated, the boundary referred to in subsection (1A) is the external boundary of all of the contiguous parcels of land if treated as a single parcel.

(1C) For the purposes of paragraph (1)(d), travel between the employee's residence and the employee's usual place of work is taken not to be at the direction or request of the Commonwealth.

(2) In paragraph (1)(d), the reference to the employee travelling does not include a reference to travelling to or from a place mentioned in paragraph (1)(e) or (f).

(3) Subsection (1) does not apply where an employee sustains an injury:

(a) while at a place referred to in that subsection; or

Authorised Version C2019C00166 registered 01/05/2019

(b) during an ordinary recess in his or her employment;

if the employee sustained the injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury.

6A Injury arising out of or in the course of employment—extended operation

(1) This section applies to the following employees:

(a) members of the Defence Force;

(b) members of the Australian Defence Force Cadets;

(e) persons declared by the Minister under subsection 5(3).

(2) If, at any time, whether before, on, or after, 1 December 1988:

(a) an employee to whom this section applies received or receives medical treatment paid for by the Commonwealth; and

(b) as an unintended consequence of that treatment the person suffered or suffers an injury;

the injury to the employee is taken to have arisen out of, or in the course of, the person's employment, whether or not the person has remained an employee to whom this section applies.

(2A) However, subsection (2) does not apply if:

(b) the injury or aggravation is first suffered by the employee on or after the MRCA commencement date; and

(c) the injury or aggravation is suffered as an unintended consequence of medical treatment paid for by the Commonwealth; and

(d) the treatment is provided either:

(i) on or after the MRCA commencement date; or

(ii) before, and on or after, the MRCA commencement date (whether the treatment spans the commencement date or is provided during separate periods before and on or after that date).

Note: After the MRCA commencement date, compensation for members of the Defence Force is provided under the MRCA (instead of this Act) for such an injury or aggravation.

Authorised Version C2019C00166 registered 01/05/2019

(3) Subsection (2) applies whether or not the original condition that was being treated was compensable under this Act.

7 Provisions relating to diseases

(1) Where:

(a) an employee has suffered, or is suffering, from a disease or the death of an employee results from a disease;

(b) the disease is of a kind specified by the Minister, by legislative instrument, as a disease related to employment of a kind specified in the instrument; and

(c) the employee was, at any time before symptoms of the disease first became apparent, engaged by the Commonwealth in employment of that kind;

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

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

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

Authorised Version C2019C00166 registered 01/05/2019

incidence of the aggravation of that disease among persons suffering from it who have engaged in other employment in the place where the employee was ordinarily employed.

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

(a) the employee first sought medical treatment for the disease, or aggravation; or

(b) the disease or aggravation resulted in the death of the employee or first resulted in the incapacity for work, or impairment of the employee;

whichever happens first.

(5) The death of an employee shall be taken, for the purposes of this Act, to have resulted from a disease or an aggravation of a disease, if, but for that disease or aggravation, as the case may be, the death of the employee would have occurred at a significantly later time.

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

(a) the incapacity or impairment would not have occurred;

(b) the incapacity would have commenced, or the impairment would have occurred, at a significantly later time; or

(c) the extent of the incapacity or impairment would have been significantly less.

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

(8) If an employee:

Authorised Version C2019C00166 registered 01/05/2019

(a) suffers a disease mentioned in the following table; and

(b) before the disease was sustained, was employed as a firefighter for the qualifying period mentioned for that disease; and

(c) was exposed to the hazards of a fire scene during that period; and

(d) in the case of a cancer of a kind covered by item 13 of the following table—satisfies the conditions (if any) prescribed for such a cancer;

the employment is, for the purposes of this Act, taken to have contributed, to a significant degree, to the contraction of the disease, unless the contrary is established.

Item	Disease	Qualifying period
1	Primary site brain cancer	5 years
2	Primary site bladder cancer	15 years
3	Primary site kidney cancer	15 years
4	Primary non-Hodgkins lymphoma	15 years
5	Primary leukemia	5 years
6	Primary site breast cancer	10 years
7	Primary site testicular cancer	10 years
8	Multiple myeloma	15 years
9	Primary site prostate cancer	15 years
10	Primary site ureter cancer	15 years
11	Primary site colorectal cancer	15 years
12	Primary site oesophageal cancer	25 years
13	A cancer of a kind prescribed for this table	The period prescribed for such a cancer

(9) For the purposes of subsection (8):

Authorised Version C2019C00166 registered 01/05/2019

(a) an employee is taken to have been employed as a firefighter if firefighting duties made up a substantial portion of his or her duties; and

(b) an employee who was employed as a firefighter for 2 or more periods that add up to the qualifying period is taken to have been so employed for the qualifying period; and

(c) an employee is taken to have been employed as a firefighter only if he or she was employed as a firefighter by the Commonwealth.

(10) Subsection (8) does not limit, and is not limited by, subsections (1) and (2).

8 Normal weekly earnings

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

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

where:

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

RP is the employee's average hourly ordinary time rate of pay during that period; and

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

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

Authorised Version C2019C00166 registered 01/05/2019

plus an additional amount calculated in relation to the relevant period under the formula:

$$NH \times OR$$

where:

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

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

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

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

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

Authorised Version C2019C00166 registered 01/05/2019

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

(a) the attainment by the employee of a particular age;

(b) the completion by the employee of a particular period of service; or

(c) the receipt by the employee of an increase in salary, wages or pay by way of an increment in a range of salary, wages or pay applicable to the employee or to his or her office, position or appointment;

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

(7) Subject to this section, if:

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

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

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

(8) Subject to this section, where:

(a) the employment of an employee is of a kind referred to in subsection 5(4) or subsection (3) of this section; and

(b) the employee is not receiving earnings from any other employment at the date of the injury;

the normal weekly earnings of the employee before the injury shall be an amount determined by the MRCC to be the amount per week that the employee would have been able to earn at the date of the

Authorised Version C2019C00166 registered 01/05/2019

injury (including any amount in respect of overtime worked on a regular basis) if he or she had engaged in suitable paid employment.

(9) The normal weekly earnings of an employee before the date of the employee's injury, as calculated under the preceding subsections, must, while the employee continues to be employed by the Commonwealth, be increased or reduced by the relevant percentage.

(9A) For the purposes of subsection (9), ***relevant percentage*** means the same percentage as the percentage of increase or reduction in the minimum amount per week payable in respect of employees included in a class of employees of which the employee was a member at the date of the injury as a result of:

(a) the operation of a law of the Commonwealth or of a State or Territory; or

(b) the making, alteration or operation of an award, order, determination or industrial agreement or the doing of any other act or thing, under such a law.

(9B) The normal weekly earnings of an employee before injury, as calculated under subsections (1) to (8) and as increased or reduced under subsection (9) must, if the employee has ceased, or ceases, to be employed by the Commonwealth, be further increased, with effect from each indexation date in relation to that cessation, by reference to the percentage of increase (if any) of an index that is prescribed for the purposes of this subsection over the year ending on the 31 December preceding each such indexation date.

(9C) For the purpose of subsection (9B), the ***indexation date***, in relation to a cessation of employment, is:

(a) the 1 July next following:

(i) the date on which this Act receives the Royal Assent; or

(ii) the date of that cessation of employment;

whichever last occurs; and

(b) each subsequent 1 July.

Authorised Version C2019C00166 registered 01/05/2019

(9D) For the purpose of subsection (9B), the regulations may specify the manner of calculating the further increase referred to in that subsection by reference to the movement of the index that is prescribed for the purposes of that subsection.

(9E) The normal weekly earnings of an employee before an injury, as calculated under the preceding subsections, must, with effect from 1 July in each year, be further increased by the amount under subsection (9F) if, in the 12 months immediately preceding that 1 July:

(a) there was no increase in those earnings under subsection (6), (7) or (9); and

(b) there was no reduction in those earnings under subsection (9).

(9F) If the normal weekly earnings of an employee before an injury must be increased because of subsection (9E), the amount by which they are increased is the percentage of increase (if any) in the index prescribed by the regulations for the purposes of this subsection over the period of 12 months ending on the 31 December immediately before the relevant 1 July.

(9G) For the purposes of subsection (9F), the regulations may specify the manner of calculating the further increase mentioned in that subsection by reference to the movement of the index that is prescribed for the purposes of that subsection.

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

(a) where the employee continues to be employed by the Commonwealth—the amount per week of the earnings that the employee would receive if he or she were not incapacitated for work; or

(b) where the employee has ceased to be employed by the Commonwealth—whichever is the greater of the following amounts:

Authorised Version C2019C00166 registered 01/05/2019

(i) the amount per week of the earnings that the employee would receive if he or she had continued to be employed by the Commonwealth in the employment in which he or she was engaged at the date of the injury;

(ii) the amount per week of the earnings that the employee would receive if he or she had continued to be employed by the Commonwealth in the employment in which he or she was engaged at the date on which the employment by the Commonwealth ceased;

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

9 Relevant period

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

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

(a) the operation of a law of the Commonwealth or of a State or Territory; or

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

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

Authorised Version C2019C00166 registered 01/05/2019

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

(a) it would be impracticable to calculate under section 8 the normal weekly earnings of the employee before an injury; or

(b) the normal weekly earnings as so calculated would not fairly represent the weekly rate at which the employee was being paid in respect of his or her employment by the Commonwealth before the injury;

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

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

10 Recovery of damages

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

11 Liability of relevant authority

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

Authorised Version C2019C00166 registered 01/05/2019

12 Amounts of compensation

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

13 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 paragraph 18(4)(a) or subsection 19(7), (8) or (9), 24(9), 27(2), 29(1) or (3), 30(1) or 137(1).

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

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

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

(4) Where the factor ascertained under subsection (5) in relation to a relevant year is greater than one, this Act has effect as if for each

Authorised Version C2019C00166 registered 01/05/2019

relevant amount there were substituted, on the first day of that relevant year, an amount calculated by multiplying by that factor:

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

(b) in any other case—the relevant amount.

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

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

13AA Indexation—Wage Price Index

Definitions

(1) In this section:

index number, in relation to a quarter, means:

(a) 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; or

(b) if:

(i) a series of index numbers is prescribed for the purposes of this paragraph; and

(ii) the Australian Statistician publishes an index number in respect of the quarter; and

(iii) that index number belongs to the series;

Authorised Version C2019C00166 registered 01/05/2019

that index number.

relevant amount means the amount specified in subsection 17(3), (4) or (5).

relevant year means:

(a) the financial year starting on 1 July 2009; or

(b) a later financial year.

Indexation

(2) If the indexation factor for a relevant year is greater than one, this Act has effect as if for each relevant amount there were substituted, on the first day of that relevant year, an amount calculated by multiplying by that factor:

(a) if, because of one or more other applications of this section, this Act has effect as if another amount or amounts were substituted for the relevant amount—the substituted amount or the last substituted amount; or

(b) in any other case—the relevant amount.

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.

Authorised Version C2019C00166 registered 01/05/2019

(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:

(a) the Wage Price Index; or

(b) another 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.

13A Application of *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Authorised Version C2019C00166 registered 01/05/2019

Part II—Compensation

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

14 Compensation for injuries

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

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

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

15 Compensation for loss of or damage to property used by employee

(1) If:

(a) an employee has an accident arising out of and in the course of his or her employment by the Commonwealth; and

(b) the accident does not cause injury to the employee but results in the loss of, or damage to, property used by the employee;

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

Note: However, members of the Defence Force with service after the MRCA commencement date might only be entitled to compensation under the MRCA and not this Act (see subsection 4AA(3)).

Authorised Version C2019C00166 registered 01/05/2019

(2) For the purposes of subsection (1), expenditure incurred by an employee in the necessary replacement or repair of property used by the employee shall be taken to include any fees or charges paid or payable by the employee to a legally qualified medical practitioner or dentist or other qualified person for a consultation, examination, prescription or other service reasonably rendered in connection with the replacement or repair.

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

16 Compensation in respect of medical expenses etc.

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

Note: Compensation is not payable under this subsection in relation to certain defence-related claims (see Division 2A of Part XI).

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

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

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

(a) if the employee has paid the cost of the medical treatment—to, or in accordance with the directions of, the employee; or

Authorised Version C2019C00166 registered 01/05/2019

(b) if the employee dies before the compensation is paid and without having paid the cost referred to in subsection (1) and another person, not being the legal personal representative of the employee, has paid that cost—to that other person; or

(c) in any other case—to the person to whom the cost is payable.

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

(6) Subject to subsection (7), if:

(a) compensation in respect of the cost of medical treatment is payable; and

(b) the employee 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 employee has made a journey for that purpose;

the Commonwealth is liable to pay compensation to the employee:

(c) in respect of the journey—of an amount worked out using the formula:

$$\text{Specified rate per kilometre} \times \text{Number of kilometres travelled}$$

where:

specified rate per kilometre means such rate per kilometre as the Minister specifies, by legislative instrument, under this subsection in respect of journeys to which this subsection applies.

numbers of kilometres travelled means the number of whole kilometres the MRCC determines to have been the reasonable length of such a journey as it was necessary for the employee to make (including the return part of the journey).

Authorised Version C2019C00166 registered 01/05/2019

(d) in respect of the employee 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 Commonwealth is not liable to pay compensation under subsection (6) unless:

(a) the reasonable length of such a journey as it was necessary for the employee to make (including the return part of the journey) exceeded 50 kilometres; or

(b) if the journey made by the employee involved the use of public transport or ambulance services—the employee's injury reasonably required the use of such transport or services regardless of the distance involved.

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

(a) the place or places where appropriate medical treatment was available to the employee;

(b) the means of transport available to the employee for the journey;

(c) the route or routes by which the employee could have travelled; and

(d) the accommodation available to the employee.

(9) Where:

(a) an employee suffers an injury;

(b) a person has reasonably incurred expenditure in connection with the transportation of the employee, or, if the employee has died, of his or her body, from the place where the injury was sustained to a hospital or similar place, or to a mortuary; and

(c) the employee, or the legal personal representative of the employee, does not make a claim for compensation in respect of that expenditure;

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

Authorised Version C2019C00166 registered 01/05/2019

that expenditure.

Authorised Version C2019C00166 registered 01/05/2019

Division 2—Injuries resulting in death

17 Compensation for injuries resulting in death

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

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

(3) Subject to this section and to sections 16 and 18, if the employee dies leaving dependants some or all of whom were, at the date of the employee's death, wholly dependent on the employee, the Commonwealth is liable to pay compensation in respect of the injury of $400,000 and that compensation is payable to, or in accordance with the directions of, the MRCC for the benefit of all of those dependants.

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

(a) subject to this section and to sections 16 and 18, the Commonwealth is liable to pay compensation in respect of the injury of such amount, not exceeding $400,000, as the MRCC determines, having regard to any losses suffered by those dependants as a result of the cessation of the employee's earnings; and

(b) that compensation is payable to, or in accordance with the directions of, the MRCC for the benefit of those dependants.

(5) If:

(a) a prescribed child was, at the date of the injury or at the date of the employee's death, wholly or mainly dependent on the employee;

Authorised Version C2019C00166 registered 01/05/2019

(b) a prescribed child, being a child of the employee, was born after the employee's death; or

(c) a prescribed child would, if the employee had not died, have been wholly or mainly dependent on the employee;

the Commonwealth is liable to pay compensation at the rate of $110 a week and that compensation is payable to, or in accordance with the directions of, the MRCC for the benefit of that child from the date of the employee's death or the date of the birth of the child, whichever is the later.

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

(a) any period during which the child is not a prescribed child; and

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

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

(a) is not affected by subsection (2);

(b) shall not be deducted from the compensation payable under subsection (3); and

(c) shall not be taken into account in determining the compensation payable under subsection (4).

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

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

Authorised Version C2019C00166 registered 01/05/2019

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

18 Compensation in respect of funeral expenses

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

(2) The amount of compensation is the amount, not exceeding the amount determined in accordance with subsection (4), that the MRCC considers reasonable, having regard to:

(a) the charges ordinarily made for funerals in the place where the funeral was carried out; and

(b) any amount paid or payable in respect of the cost of the funeral under any other law of the Commonwealth.

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

(4) The maximum amount of compensation under subsection (2) is:

(a) $9,000; or

(b) if the regulations prescribe a higher amount—that amount.

Note: The amount of $9,000 is indexed under section 13.

Authorised Version C2019C00166 registered 01/05/2019

Division 3—Injuries resulting in incapacity for work

19 Compensation for injuries resulting in incapacity

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

(2) Subject to this Part, the Commonwealth is liable to pay to the employee in respect of the injury, for each week that is a maximum rate compensation week during which the employee is incapacitated, an amount of compensation worked out using the formula:

NWE – AE

where:

AE is the greater of the following amounts:

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

(b) the amount per week (if any) that the employee earns from any employment (including self-employment) that is undertaken by the employee during that week.

NWE is the amount of the employee's normal weekly earnings.

(2A) For the purposes of subsection (2), a week is a ***maximum rate compensation week***, in relation to an employee to whom this section applies, if:

(a) it is a week during which the employee's incapacity prevents the employee working the employee's normal weekly hours because the employee is unable to work or unable to work at the level at which the employee worked before the injury; and

(b) the total number of hours that the employee has been prevented from working, or working at that level, during that incapacity, in that week and in all previous weeks, if any, to

Authorised Version C2019C00166 registered 01/05/2019

which paragraph (a) applies, does not exceed 45 times the employee's normal weekly hours.

(2B) If, before the end of a particular week, the total of the hours that the employee has been prevented from working, or working at that level, in that week and in previous weeks, will exceed the total number of hours worked out in accordance with paragraph (2A)(b), then:

(a) subsection (2) applies in respect of the part of the week before that total number of hours is exceeded in accordance with subsection (2C); and

(b) subsection (3) applies in respect of the remainder of the week in accordance with subsection (2D).

(2C) For the purposes of paragraph (2B)(a), the compensation payable in respect of the part of the week to which that paragraph refers is an amount worked out using the formula:

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

where:

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

NWE is the amount of the employee's normal weekly earnings.

NWH means the number of normal weekly hours worked by the employee before his or her injury.

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

(a) that would have counted towards the employee's normal weekly hours (whether those hours are worked or not); and

(b) that elapse before the total number of hours worked out in accordance with paragraph (2A)(b) exceeds 45 times the employee's normal weekly hours.

Authorised Version C2019C00166 registered 01/05/2019

(2D) For the purposes of paragraph (2B)(b), the compensation payable in respect of the part of the week to which that paragraph refers is worked out using the formula:

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

where:

NWH means the number of normal weekly hours worked by the employee before his or her incapacity.

reduced rate compensation entitlement is the rate of compensation that would have been applicable for the whole week had subsection (3) applied throughout the whole week.

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

(a) that would have counted towards the employee's normal weekly hours (whether those hours are worked or not); and

(b) that elapse before the total number of hours worked out in accordance with paragraph (2A)(b) exceeds 45 times the employee's normal weekly hours.

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

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

where:

adjustment percentage is a percentage equal to:

(a) if the employee is not employed during that week—75%; or

(b) if the employee is employed for 25% or less of his or her normal weekly hours during that week—80%; or

(c) if the employee is employed for more than 25% but not more than 50% of his or her normal weekly hours during that week—85%; or

Authorised Version C2019C00166 registered 01/05/2019

(d) if the employee is employed for more than 50% but not more than 75% of his or her normal weekly hours during that week—90%; or

(e) if the employee is employed for more than 75% but less than 100% of his or her normal weekly hours during that week—95%; or

(f) if:

(i) the employee is employed for 100% of the employee's normal weekly hours during that week; or

(ii) subsection (3AA) applies to the employee in relation to that week;

100%.

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

NWE is the amount of the employee's normal weekly earnings.

(3AA) This subsection applies to an employee in relation to a week beginning on or after the commencement of this subsection and before 1 July 2022 if:

(a) because of subsection 5(5), subsection (3) of this section has effect in relation to the employee on one or more days in that week as a person who is a former member of the Defence Force; and

(b) the MRCC is satisfied that, on one or more days in that week, the person is undertaking a rehabilitation program provided under this Act; and

(c) the MRCC is satisfied that, on one or more days in that week and as part of that program, the person is undertaking full-time study.

(3AB) For the purposes of paragraph (3AA)(c), a person is ***undertaking full-time study*** in the circumstances determined in an instrument under subsection (3AC).

(3AC) The MRCC may, by legislative instrument, determine circumstances for the purposes of subsection (3AB).

Authorised Version C2019C00166 registered 01/05/2019

(3AD) Without limiting subsection (3AC), the instrument may provide that a person is undertaking full-time study in a period (such as, for example, a period of vacation) that does not fall within a study period.

(3A) If, as a result of the incapacity:

(a) the amount per week payable to the employee in respect of his or her continued employment is reduced; and

(b) a pension under a superannuation scheme is payable to the employee;

subsection (3) applies in relation to the employee in relation to a week during which the employee 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 employee in respect of that week.

(4) In determining, for the purposes of subsections (2) and (3), the amount per week that an employee is able to earn in suitable employment, the MRCC must have regard to:

(a) where the employee is in employment (including self-employment)—the amount per week that the employee is earning in that employment;

(b) where, after becoming incapacitated for work, the employee received an offer of suitable employment and failed to accept that offer—the amount per week that the employee would be earning in that employment if he or she were engaged in that employment;

(c) where, after becoming incapacitated for work, the employee received an offer of suitable employment and, having accepted that offer, failed to engage, or to continue to engage, in that employment—the amount per week that the employee would be earning in that employment if he or she were engaged in that employment;

(d) where, after becoming incapacitated for work, the employee received an offer of suitable employment on condition that the employee completed a reasonable rehabilitation or

Authorised Version C2019C00166 registered 01/05/2019

vocational retraining program and the employee failed to fulfil that condition—the amount that the employee would be earning in that employment if he or she were engaged in that employment;

(e) where, after becoming incapacitated for work, the employee has failed to seek suitable employment—the amount per week that, having regard to the state of the labour-market at the relevant time, the employee could reasonably be expected to earn in such employment if he or she were engaged in such employment;

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

(g) any other matter that the MRCC considers relevant.

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

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

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

(a) $202, or, if subsection (8) or (9) applies in relation to the employee, the sum of $202 and the amount or amounts required to be added under whichever of those subsections applies; or

(b) an amount equal to 90% of the employee's normal weekly earnings;

Authorised Version C2019C00166 registered 01/05/2019

whichever is less.

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

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

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

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

(11) If 2 or more prescribed children are each:
  (a) a prescribed person in relation to the employee; and
  (b) wholly or mainly dependent on the employee;

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

(12) In this section, ***prescribed person***, in relation to an employee, means:
  (a) the spouse of the employee; or
  (b) any of the following persons, being a person who is 16 or more:
    (i) the parent, step-parent, father-in-law, mother-in-law, grandparent, child, stepchild, grandchild, sibling or half-sibling of the employee;
    (ii) a person in relation to whom the employee stands in the position of a parent or who stands in the position of a parent to the employee;

Authorised Version C2019C00166 registered 01/05/2019

(iii) a person (other than the spouse of the employee or a person referred to in subparagraph (i) or (ii)) who is wholly or mainly maintained by the employee and has the care of a prescribed child, being a child who is wholly or mainly dependent on the employee.

Note: In relation to subparagraph (12)(b)(i), see also subsection 4(2).

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

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

(1) Compensation payable to an employee who is incapacitated for work as a result of an injury is determined in accordance with this section if:

(a) the employee is retired from his or her employment (whether the employee retired voluntarily or was compulsorily retired); and

(b) the employee receives a pension under a superannuation scheme as a result of the employee's retirement.

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

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

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

where:

Authorised Version C2019C00166 registered 01/05/2019

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

(a) section 19, other than subsection 19(6), had applied to the employee; and

(b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the week were a week referred to in subsection 19(3).

(4) In using the formula in subsection (3) to calculate an amount of compensation for an employee who retired before the day on which item 22 of Schedule 1 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* commenced, use "SC" instead of "5% of the employee's normal weekly earnings". For this purpose:

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

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

(1) Compensation payable to an employee who is incapacitated for work as a result of an injury is determined in accordance with this section if:

(a) the employee is retired from his or her employment (whether the employee retired voluntarily or was compulsorily retired); and

(b) the employee receives a lump sum benefit under a superannuation scheme as a result of the employee's retirement.

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

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

Authorised Version C2019C00166 registered 01/05/2019

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

where:

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

(a) section 19, other than subsection 19(6), had applied to the employee; and

(b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the week were a week referred to in subsection 19(3).

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 employee by the rate specified in an instrument made under subsection (5); and

(b) dividing the result of paragraph (a) by 52.

(4) In using the formula in subsection (3) to calculate an amount of compensation for an employee who retired before the day on which item 22 of Schedule 1 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* commenced, use "SC" instead of "5% of the employee's normal weekly earnings". For this purpose:

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

(5) For the purposes of the definition of ***weekly interest on the lump sum*** in subsection (3) of this section and subsection 21A(3), the Minister may, by legislative instrument, specify a rate that applies for the period of 12 months commencing on 1 July in any year.

Authorised Version C2019C00166 registered 01/05/2019

21A Compensation for injuries resulting in incapacity if employee is in receipt of a superannuation pension and a lump sum benefit

(1) Compensation payable to an employee who is incapacitated for work as a result of an injury is determined in accordance with this section if:

(a) the employee is retired from his or her employment (whether the employee retired voluntarily or was compulsorily retired); and

(b) the employee receives:

(i) a pension; and

(ii) a lump sum benefit;

under a superannuation scheme as a result of the employee's retirement.

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

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

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

where:

amount of compensation means the amount of compensation that would have been payable to the employee for the relevant week if:

(a) section 19, other than subsection 19(6), had applied to the employee; and

(b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the relevant week were a week referred to in subsection 19(3).

Authorised Version C2019C00166 registered 01/05/2019

superannuation amount in relation to the pension means the superannuation amount in relation to the pension received by the employee in respect of the relevant week.

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 employee by the rate specified in an instrument made under subsection 21(5); and

(b) dividing the result of paragraph (a) by 52.

(4) In using the formula in subsection (3) to calculate an amount of compensation for an employee who retired before the day on which item 22 of Schedule 1 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* commenced, use "SC" instead of "5% of the employee's normal weekly earnings". For this purpose:

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

22 Compensation where employee is maintained in a hospital

(1) Where:

(a) as a result of an injury, an employee (other than an employee to whom section 20, 21 or 21A applies) is maintained as a patient in a hospital, nursing home or similar place and has been so maintained for a continuous period of not less than one year; and

(b) there are no prescribed persons or prescribed children who are dependent on the employee;

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

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

Authorised Version C2019C00166 registered 01/05/2019

(d) the period during which the employee is likely to be such a patient;

but the amount so determined shall not be less than one-half of, nor more than, the amount per week of compensation that would have been payable to the employee under section 19, 20, 21 or 21A, as the case requires, had that section applied to the employee.

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

23 Compensation for incapacity not payable in certain cases

(1) Compensation is not payable under section 19, 20, 21, 21A or 22 to an employee who has reached pension age.

(1A) However, if an employee who has reached the age that is 2 years before pension age suffers an injury:

(a) subsection (1) does not apply; and

(b) compensation is payable under section 19, 20, 21, 21A or 22 in respect of the injury:

(i) to the extent that this Act (other than subsection (1)) allows; and

(ii) for a maximum of 104 weeks (whether consecutive or not) during which the employee is incapacitated.

(1B) However, if a Parliamentary Service employee who has reached the age that is 2 years before pension age suffers an injury:

(a) subsection (1) does not apply; and

(b) compensation is payable under section 19, 20, 21, 21A or 22 in respect of the injury:

(i) to the extent that this Act (other than subsection (1)) allows; and

(ii) for a maximum of 104 weeks (whether consecutive or not) during which the employee is incapacitated.

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

Authorised Version C2019C00166 registered 01/05/2019

(3) Subject to section 31, where a determination is made that an amount of compensation is payable to an employee under section 30 in respect of an injury, compensation is not payable to the employee under section 19, 20, 21 or 21A 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.

Authorised Version C2019C00166 registered 01/05/2019

Division 4—Injuries resulting in impairment

24 Compensation for injuries resulting in permanent impairment

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

(2) For the purpose of determining whether an impairment is permanent, the MRCC shall have regard to:
  (a) the duration of the impairment;
  (b) the likelihood of improvement in the employee's condition;
  (c) whether the employee has undertaken all reasonable rehabilitative treatment for the impairment; and
  (d) any other relevant matters.

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

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

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

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

(7) Subject to section 25, if:
  (a) the employee has a permanent impairment other than a hearing loss; and
  (b) the MRCC determines that the degree of permanent impairment is less than 10%;

Authorised Version C2019C00166 registered 01/05/2019

an amount of compensation is not payable to the employee under this section.

(7A) Subject to section 25, if:

(a) the employee has a permanent impairment that is a hearing loss; and

(b) the MRCC determines that the binaural hearing loss suffered by the employee is less than 5%;

an amount of compensation is not payable to the employee under this section.

(8) 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.

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

25 Interim payment of compensation

(1) Where the MRCC:

(a) makes a determination that an employee is suffering from a permanent impairment as a result of an injury; and

(b) is satisfied that the degree of the impairment is equal to or more than 10% but has not made a final determination of the degree of impairment;

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

(2) The amount assessed by the MRCC under subsection (1) shall be an amount that is the same percentage of the maximum amount specified in subsection 24(9) as the percentage determined by the

Authorised Version C2019C00166 registered 01/05/2019

MRCC under subsection (1) to be the degree of permanent impairment of the employee.

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

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

(5) If the MRCC has made a final assessment of the degree of permanent impairment of an employee constituted by a hearing loss, no further amounts of compensation are payable to the employee in respect of a subsequent increase in the hearing loss, unless the subsequent increase in the degree of binaural hearing loss is 5% or more.

26 Payment of compensation

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

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

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

Authorised Version C2019C00166 registered 01/05/2019

(4) This section does not apply where:
   (a) the MRCC has been requested under Part VI to reconsider a determination under section 24 or 25, as the case may be; or
   (b) a proceeding in respect of such a determination has been instituted under Part VI.

27 Compensation for non-economic loss

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

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

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

where:

A is the percentage finally determined by the MRCC under section 24 to be the degree of permanent impairment of the employee; and

B is the percentage determined by the MRCC under the approved Guide to be the degree of non-economic loss suffered by the employee.

(3) This section does not apply in relation to a permanent impairment commencing before 1 December 1988 unless an application for compensation for non-economic loss in relation to that impairment has been made before the date of introduction of the Bill for the Act that inserted this subsection.

Authorised Version C2019C00166 registered 01/05/2019

28 Approved Guide

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

(a) criteria by reference to which the degree of the permanent impairment of an employee resulting from an injury shall be determined;

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

(c) methods by which the degree of permanent impairment and the degree of non-economic loss, as determined under those criteria, shall be expressed as a percentage.

(2) The MRCC may, from time to time, by instrument in writing, vary or revoke the approved Guide.

(3) A Guide prepared under subsection (1), and a variation or revocation under subsection (2) of such a Guide, must be approved by the Minister.

(3A) A Guide prepared under subsection (1), and a variation or revocation under subsection (2) of such a Guide, is a legislative instrument made by the Minister on the day on which the Guide, or variation or revocation, is approved by the Minister.

(4) Where the MRCC or the Administrative Appeals Tribunal is required to assess or re-assess, or review the assessment or re-assessment of, the degree of permanent impairment of an employee resulting from an injury, or the degree of non-economic loss suffered by an employee, the provisions of the approved Guide are binding on the MRCC or the Administrative Appeals Tribunal, as the case may be, in the carrying out of that assessment, re-assessment or review, and the assessment, re-assessment or review shall be made under the relevant provisions of the approved Guide.

Authorised Version C2019C00166 registered 01/05/2019

(5) The percentage of permanent impairment or non-economic loss suffered by an employee as a result of an injury ascertained under the methods referred to in paragraph (1)(c) may be 0%.

(6) In preparing criteria for the purposes of paragraphs (1)(a) and (b), or in varying those criteria, the MRCC shall have regard to medical opinion concerning the nature and effect (including possible effect) of the injury and the extent (if any) to which impairment resulting from the injury, or non-economic loss resulting from the injury or impairment, may reasonably be capable of being reduced or removed.

(8) The MRCC shall make copies of the "Guide to the Assessment of the Degree of Permanent Impairment" that has been approved by the Minister, and of any variation of that Guide that has been so approved, available upon application by a person and payment of the prescribed fee (if any).

Authorised Version C2019C00166 registered 01/05/2019

Division 5—Household and attendant care services

29 Compensation for household services and attendant care services obtained as a result of a non-catastrophic injury

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

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

(a) the extent to which household services were provided by the employee before the date of the injury and the extent to which he or she is able to provide those services after that date;

(b) the number of persons living with the employee as members of his or her household, their ages and their need for household services;

(c) the extent to which household services were provided by the persons referred to in paragraph (b) before the injury;

(d) the extent to which the persons referred to in paragraph (b), or any other members of the employee's family, might reasonably be expected to provide household services for themselves and for the employee after the injury;

(e) the need to avoid substantial disruption to the employment or other activities of the persons referred to in paragraph (b).

Note: In relation to paragraph (2)(d), see also subsection 4(2).

(3) Where, as a result of an injury (other than a catastrophic injury) to an employee, the employee obtains attendant care services that he

Authorised Version C2019C00166 registered 01/05/2019

or she reasonably requires, the Commonwealth is liable to pay compensation of:

(a) $200 per week; or

(b) an amount per week equal to the amount per week paid or payable by the employee for those services;

whichever is less.

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

(a) the nature of the employee's injury and the degree to which that injury impairs his or her ability to provide for his or her personal care;

(b) the extent to which any medical service or nursing care received by the employee provides for his or her essential and regular personal care;

(c) the extent to which it is reasonable to meet any wish by the employee to live outside an institution;

(d) the extent to which attendant care services are necessary to enable the employee to undertake or continue employment;

(e) any assessment made in relation to the rehabilitation of the employee;

(f) the extent to which a relative of the employee might reasonably be expected to provide attendant care services.

Note: In relation to paragraph (4)(f), see also subsection 4(2).

(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 the MRCC determines otherwise in a particular case on the ground of financial hardship or the need to provide for adequate supervision of dependent children.

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

(a) where the employee has paid for the household services or

Authorised Version C2019C00166 registered 01/05/2019

attendant care services, as the case may be—to the employee; or

(b) in any other case—to the person who provided those services.

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

29A Compensation for household services and attendant care services obtained as a result of a catastrophic injury

Household services

(1) If, as a result of a catastrophic injury to an employee, the employee obtains household services that he or she reasonably requires, the Commonwealth is liable to pay compensation of such amount per week as the MRCC considers reasonable in the circumstances.

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

(a) the extent to which household services were provided by the employee before the date of the catastrophic injury and the extent to which he or she is able to provide those services after that date;

(b) the number of persons living with the employee as members of his or her household, their ages and their need for household services;

(c) the extent to which household services were provided by the persons referred to in paragraph (b) before the catastrophic injury;

(d) the extent to which the persons referred to in paragraph (b), or any other members of the employee's family, might

Authorised Version C2019C00166 registered 01/05/2019

reasonably be expected to provide household services for themselves and for the employee after the catastrophic injury;

(e) the need to avoid substantial disruption to the employment or other activities of the persons referred to in paragraph (b).

Note: In relation to paragraph (2)(d), see also subsection 4(2).

Attendant care services

(3) If, as a result of a catastrophic injury to an employee, the employee obtains attendant care services that he or she reasonably requires, the Commonwealth is liable to pay compensation of such amount per week as the MRCC considers reasonable in the circumstances.

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

(a) the nature of the employee's catastrophic injury and the degree to which that injury impairs his or her ability to provide for his or her personal care;

(b) the extent to which any medical service or nursing care received by the employee provides for his or her essential and regular personal care;

(c) the extent to which it is reasonable to meet any wish by the employee to live outside an institution;

(d) the extent to which attendant care services are necessary to enable the employee to undertake or continue employment;

(e) any assessment made in relation to the rehabilitation of the employee;

(f) the extent to which a relative of the employee might reasonably be expected to provide attendant care services.

Note: In relation to paragraph (4)(f), see also subsection 4(2).

Recipient of compensation

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

Authorised Version C2019C00166 registered 01/05/2019

(a) if the employee has paid for the household services or attendant care services, as the case may be—to the employee; or

(b) in any other case—to the person who provided those services.

(6) If the Commonwealth pays an amount under subsection (1) or (3) to a person who provided household services or attendant care services to an employee, the payment of the amount is, to the extent of the payment, a discharge of the liability of the employee to pay for those services.

Authorised Version C2019C00166 registered 01/05/2019

Division 6—Miscellaneous

30 Redemption of compensation

(1) Where:

(a) the Commonwealth is liable to make weekly payments under section 19, 20, 21 or 21A to an employee in respect of an injury resulting in an incapacity;

(b) the amount of those payments is $50 per week or less; and

(c) the MRCC is satisfied that the degree of the employee's incapacity is unlikely to change;

the MRCC must make a determination that the liability of the Commonwealth to make further payments to the employee under that section be redeemed by the payment to the employee of a lump sum.

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

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

(3) For the purposes of subsection (2):

amount per week means the amount per week payable to the employee under section 19, 20, 21 or 21A, as the case may be, at the date of the determination.

specified number means the number specified by the Minister.

n means the number worked out using the formula:

$$\frac{\text{Number of days}}{365}$$

where:

number of days means the number of days in the period beginning

Authorised Version C2019C00166 registered 01/05/2019

on the day after the day on which the determination is made and ending:

(a) if the employee is injured before reaching the age that is 2 years before pension age—on the day immediately before the day on which the employee reaches pension age; and

(b) if the employee is injured on or after reaching the age that is 2 years before pension age—on the day immediately before the employee would cease to be entitled to receive compensation under section 19, 20, 21 or 21A of this Act.

(4) The Minister may, from time to time, by legislative instrument, specify a number (being a specification of the number in decimal notation) for the purposes of subsection (2).

31 Recurrent payments after payment of lump sum

(1) Where:

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

(b) the incapacity is likely to continue indefinitely;

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

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

32 Cancelled determinations not to affect certain payments of compensation

(1) For the purposes of subsections 23(3) and 31(2), account shall not be taken of a determination that the liability of the Commonwealth

Authorised Version C2019C00166 registered 01/05/2019

to make further payments to an employee under section 19, 20, 21 or 21A is to be redeemed if the determination:

(a) is revoked by the MRCC; or

(b) is set aside by a tribunal or court.

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

33 Reduction of compensation in certain cases

(1) Where, in relation to a day in respect of which compensation is payable to an employee under section 19, 20, 21, 21A, 22 or 31, an amount or amounts are paid or payable to the employee by the Commonwealth or a licensed corporation by way of salary, wages or pay, the amount of compensation payable under that section in respect of that day shall be reduced by the amount, or the sum of the amounts, so paid or payable to the employee.

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

(a) an amount by way of pay in respect of a period of leave of absence granted, or in lieu of the grant of a period of leave of absence, under section 16 or 17 of the *Long Service Leave (Commonwealth Employees) Act 1976*, section 73 or 74 of the *Public Service Act 1922* as in force before 20 December 1976 or section 7 or 8 of the *Commonwealth Employees' Furlough Act 1943* as in force before that day;

(b) an amount by way of pay in respect of a period of leave of absence granted, or in lieu of the grant of a period of leave of absence, under regulations in force under the *Defence Act 1903*;

(ba) 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

Authorised Version C2019C00166 registered 01/05/2019

State or Territory or an industrial award, determination, order or agreement;

(c) any amount that the employee is able to earn in suitable employment or any amount of earnings payable to an employee, being an amount that has been taken into account for the purposes of calculating the amount of compensation payable to the employee under section 19; or

(d) an amount of deferred pay within the meaning of Part III of the *Defence Forces Retirement Benefits Act 1959* or of any provision of that Part.

Authorised Version C2019C00166 registered 01/05/2019

Part III—Rehabilitation

36 Assessment of capability of undertaking rehabilitation program

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

(1A) If:

(a) an employee has made a claim under Part V in relation to an injury to the employee; and

(b) the relevant authority has not determined the claim; and

(c) the person is included in a class of persons determined in an instrument under subsection (1B); and

(d) the MRCC has determined, in writing, that this section applies to the person;

the rehabilitation authority may at any time, and must on the written request of the employee, arrange for the assessment of the employee's capability of undertaking a rehabilitation program.

(1B) The MRCC may, by legislative instrument, determine a class of persons for the purposes of paragraph (1A)(c).

(1C) A determination under paragraph (1A)(d) is not a legislative instrument.

(2) An assessment mentioned in subsection (1) or (1A) shall be made by:

(a) a legally qualified medical practitioner nominated by the rehabilitation authority;

(b) a suitably qualified person (other than a medical practitioner) nominated by the rehabilitation authority; or

Authorised Version C2019C00166 registered 01/05/2019

(c) a panel comprising such legally qualified medical practitioners or other suitably qualified persons (or both) as are nominated by the rehabilitation authority.

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

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

Note: Subsection (9) provides that subsections (4), (4A) and (7) do not apply to an employee if an assessment is arranged under subsection (1A) in relation to the employee.

(4A) However, subsection (4) does not operate to suspend the employee's right to compensation for the cost of medical treatment that is payable under section 16.

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

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

(a) the means of transport available to the employee for the journey;

(b) the route or routes by which the employee could have travelled; and

(c) the accommodation available to the employee.

Authorised Version C2019C00166 registered 01/05/2019

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

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

(9) If the rehabilitation authority arranges for an assessment mentioned in subsection (1A) in relation to an employee, subsections (4), (4A) and (7) do not apply to the employee in connection with the assessment.

37 Provision of rehabilitation programs

(1) A rehabilitation authority may make a determination that an employee who has suffered an injury resulting in an incapacity for work or an impairment should undertake a rehabilitation program.

(1A) If:

(a) an employee has made a claim under Part V in relation to an injury to the employee; and

(b) the relevant authority has not determined the claim; and

(c) the person is included in a class of persons determined in an instrument under subsection (1B); and

(d) the MRCC has determined, in writing, that this section applies to the person;

a rehabilitation authority may make a determination that the employee should undertake a rehabilitation program.

(1B) The MRCC may, by legislative instrument, determine a class of persons for the purposes of paragraph (1A)(c).

Authorised Version C2019C00166 registered 01/05/2019

(2) If a rehabilitation authority makes a determination under subsection (1) or (1A), the authority may:

(a) provide a rehabilitation program for the employee itself; or

(b) make arrangements with an approved program provider for that provider to provide a rehabilitation program for the employee.

Note: A rehabilitation program that is being provided to a person under this section might cease if the person is also provided with rehabilitation under the MRCA (see section 18 of the CTPA).

(2A) A determination made by a rehabilitation authority under subsection (1) or (1A) is not a legislative instrument.

(2B) A determination made by the MRCC under paragraph (1A)(d) is not a legislative instrument.

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

(a) any written assessment given under subsection 36(8);

(b) any reduction in the future liability to pay compensation if the program is undertaken;

(c) the cost of the program;

(d) any improvement in the employee's opportunity to be employed after completing the program;

(e) the likely psychological effect on the employee of not providing the program;

(f) the employee's attitude to the program;

(g) the relative merits of any alternative and appropriate rehabilitation program; and

(h) any other relevant matter.

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

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

Authorised Version C2019C00166 registered 01/05/2019

(a) if the employee is undertaking a full-time program—compensation is payable to the person of an amount per week equal to the amount per week of the compensation that would, but for this subsection, have been payable under section 19 if the incapacity referred to in that section had continued throughout the period of the program; or

(b) if the employee is undertaking a part-time program—compensation is payable to the employee of such amount per week as the relevant authority determines, being an amount not less than the amount per week of the compensation that, but for this subsection, would have been payable to the employee under this Act and not greater than the amount per week of the compensation that would have been payable under paragraph (a) if the employee had been undertaking a full-time program.

Note: Subsection (9) provides that subsections (5) to (8) do not apply to an employee if a determination is made under subsection (1A) in relation to the employee.

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

(7A) However, subsection (7) does not operate to suspend the employee's right to compensation for the cost of medical treatment that is payable under section 16.

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

(9) If a rehabilitation authority makes a determination under subsection (1A) in relation to an employee, subsections (5) to (8) do not apply to the employee in connection with that determination.

Authorised Version C2019C00166 registered 01/05/2019

38 Review of certain determinations by the MRCC

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

(a) the terms of the determination;

(b) the reasons for the determination; and

(c) a statement to the effect that the employee may, if dissatisfied with the determination, request the MRCC for a review of the determination under this section.

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

(3) A request shall:

(a) set out the reasons for the request; and

(b) be given to the MRCC within 30 days after the day on which the determination first came to the notice of the employee, or within such further period (if any) as the MRCC, either before or after the expiration of that period, allows.

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

39 Compensation payable in respect of certain alterations etc.

(1) Where:

(a) an employee suffers an injury resulting in an impairment; and

(b) the employee is undertaking, or has completed, a rehabilitation program (except in connection with a determination under subsection 37(1A)) or has been assessed as not capable of undertaking such a program (except an assessment arranged under subsection 36(1A));

Authorised Version C2019C00166 registered 01/05/2019

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

(c) any alteration of the employee's place of residence or place of work;

(d) any modifications of a vehicle or article used by the employee; or

(e) any aids or appliances for the use of the employee, or the repair or replacement of such aids or appliances;

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

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

(a) the likely period during which the alteration, modification, aid or appliance will be required;

(b) any difficulties faced by the employee in gaining access to, or enjoying reasonable freedom of movement in, his or her place of residence or work;

(c) any difficulties faced by the employee in gaining access to, driving or enjoying freedom and safety of movement in, a vehicle used by the employee;

(d) any alternative means of transport available to the employee;

(e) whether arrangements can be made for hiring the relevant aid or appliance;

(f) when the employee has previously received compensation under this section in respect of an alteration of his or her place of residence or a modification of a vehicle and has later disposed of that place of residence or vehicle—whether the value of that place of residence or vehicle was increased as a result of the alteration or modification.

Authorised Version C2019C00166 registered 01/05/2019

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

(a) to, or in accordance with the directions of, the employee;

(b) if the employee dies before the compensation is paid and without having paid the cost referred to in subsection (1) and another person, not being the legal personal representative of the employee, has paid that cost—to that other person; or

(c) if that cost has not been paid and the employee, or the legal personal representative of the employee, is unable, or refuses or fails, to make a claim for the compensation—to the person to whom that cost is payable.

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

40 Duty to provide suitable employment

Where an employee is undertaking, or has completed, a rehabilitation program (except in connection with a determination under subsection 37(1A)), the Commonwealth shall take all reasonable steps to provide the employee with suitable employment or to assist the employee to find such employment.

40A Scheme may provide for payments to employers

(1) The MRCC may, in writing, determine a scheme for and in relation to the making of payments to employers in respect of the provision by the employers of suitable employment to employees as mentioned in subsection 40(1).

Scheme must be approved by the Minister

(2) The scheme has no effect unless the Minister has approved it in writing.

Authorised Version C2019C00166 registered 01/05/2019

Variation or revocation of scheme

(3) The MRCC may, by written determination, vary or revoke the scheme that is in force under this section.

(4) A determination under subsection (3) has no effect unless the Minister has approved it in writing.

Legislative instruments

(5) A determination under subsection (1) or (3) made by the MRCC and approved by the Minister is a legislative instrument made by the Minister on the day on which the determination is approved.

41 Rehabilitation authorities to comply with guidelines

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

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

41A Delegation by rehabilitation authority

(1) A rehabilitation authority who is the principal officer of an Entity may, in writing, delegate to an officer of, or a person employed by, that Entity all or any of the powers and functions of the rehabilitation authority under this Part.

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

Authorised Version C2019C00166 registered 01/05/2019

Part IV—Liabilities arising apart from this Act

42 Interpretation

In this Part:

(a) a reference to the loss of, or damage to, property used by an employee is a reference to the loss of, or damage to, that property in circumstances referred to in section 15;

(b) a reference to an employee is, if the employee has died, a reference to his or her legal personal representative; and

(c) a reference to a dependant of a deceased employee is, if the dependant has died, a reference to the dependant's legal personal representative.

43 Certain persons may request cessation of compensation payments

(1) Where compensation under this Act is payable to, or for the benefit of, a person who is:

(a) a member of the Forces, or a member of a Peacekeeping Force, for the purposes of Part IV of the *Veterans' Entitlements Act 1986*; or

(b) a veteran who has, on or after the day on which the *Military Compensation Act 1994* commences, rendered operational service for the purposes of Part II of the *Veterans' Entitlements Act 1986*; or

(c) a dependant of such a member or veteran;

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

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

(a) an amount of compensation under this Act that is payable to, or for the benefit of, the person at the time of that receipt,

Authorised Version C2019C00166 registered 01/05/2019

being an amount to which the request relates, ceases to be so payable; and

(b) an amount of compensation under this Act that would, but for this section, become payable to, or for the benefit of, that person during the period when the request is in force, being an amount to which the request relates, does not become payable.

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

(4) The revocation of a request:

(a) has effect on the receipt of the notice of revocation by the MRCC; and

(b) does not revive any entitlement to an amount of compensation that had ceased to be payable, or had not become payable, as a result of the making of the request.

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

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

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

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

(a) an injury sustained by an employee in the course of his or her employment, being an injury in respect of which the Commonwealth would, but for this subsection, be liable (whether vicariously or otherwise) for damages; or

Authorised Version C2019C00166 registered 01/05/2019

(b) the loss of, or damage to, property used by an employee resulting from such an injury;

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

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

(3) If:

(a) an employee has suffered an injury in the course of his or her employment; and

(b) that injury results in that employee's death;

subsection (1) does not prevent a dependant of that employee bringing an action against the Commonwealth or another employee in respect of the death of the first-mentioned employee.

(4) Subsection (3) applies whether or not the deceased employee, before his or her death, had made an election under subsection 45(1).

45 Actions for damages—election by employees

(1) Where:

(a) compensation is payable under section 24, 25 or 27 in respect of an injury to an employee; and

(b) the Commonwealth or another employee would, but for subsection 44(1), be liable for damages for any non-economic loss suffered by the employee as a result of the injury;

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

(2) Where an employee makes an election:

(a) subsection 44(1) does not apply in relation to an action or other proceeding subsequently instituted by the employee

Authorised Version C2019C00166 registered 01/05/2019

against the Commonwealth or the other employee for damages for the non-economic loss to which the election relates; and

(b) compensation is not payable after the date of the election under section 24, 25 or 27 in respect of the injury.

(3) An election is irrevocable.

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

(5) The election by an employee under this section to institute an action or proceeding against the Commonwealth or another employee does not prevent the employee, before, or instead of, formally instituting such action or proceeding, doing any other thing that constitutes an action for non-economic loss.

46 Notice of common law claims against third party

(1) Where:

(a) compensation is payable under this Act in respect of the death of an employee, an injury to an employee or the loss of, or damage to, property used by an employee;

(b) the death, injury, loss or damage occurred in circumstances that appear to create a legal liability in a person (other than the Commonwealth or another employee) to pay damages in respect of the death, injury, loss or damage; and

(c) the employee or a dependant of the deceased employee, as the case may be, makes a claim against that person for the recovery of such damages;

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

Penalty: 5 penalty units

Authorised Version C2019C00166 registered 01/05/2019

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

47 Notice of common law claims against Commonwealth

(1) If:

(a) compensation is payable under this Act in respect of the death of an employee or an injury to an employee; and

(b) the employee, or a dependant of the deceased employee, as the case may be, makes a claim for damages in respect of the death or injury against the Commonwealth or another employee;

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

Penalty: 5 penalty units

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

48 Compensation not payable where damages recovered

(1) This section applies where:

(a) an employee recovers damages in respect of an injury to the employee or in respect of the loss of, or damage to, property used by the employee, being an injury, loss or damage in respect of which compensation is payable under this Act; or

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

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

Authorised Version C2019C00166 registered 01/05/2019

Penalty: 10 penalty units.

(2A) Subsection (2) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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

(a) the amount of that compensation; or

(b) the amount of the damages;

whichever is less.

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

(4A) Subsection (3) does not apply if the damages were recovered in an action for non-economic loss or by way of a settlement of such an action.

(5) Subsection (4) does not apply if the damages were recovered:

(a) as a result of a claim, or fresh claim, made by the MRCC under section 50 (whether or not that claim progressed to the formal institution of proceedings); or

(b) as a result of the taking over by the MRCC of 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).

Authorised Version C2019C00166 registered 01/05/2019

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

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

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

(b) references in that section to the Commissioner were references to the MRCC;

(c) references in that section to compensation payable under the 1971 Act were references to compensation payable under this Act; and

(d) the reference in subsection 99(9) to subsection 43(5) or (7) of the 1971 Act were a reference to subsection 17(5) of this Act.

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

49 Dependants not claiming compensation

(1) Where:

(a) compensation is payable under this Act in respect of an injury that resulted in the death of an employee; and

Authorised Version C2019C00166 registered 01/05/2019

(b) damages in respect of the death of the employee are recovered by or for the benefit of a prescribed dependant of the deceased employee;

this section applies in relation to that prescribed dependant.

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

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

(b) the amount of the damages recovered by the prescribed dependant;

whichever is less.

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

(a) the prescribed amount; or

(b) the amount of the damages recovered by the prescribed dependant;

whichever is less.

(4) In this section:

damages has the same meaning as in section 48.

prescribed amount means an amount calculated under the formula:

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

where:

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

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

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

Authorised Version C2019C00166 registered 01/05/2019

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

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

(a) shall be taken not to include:

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

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

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

50 Common law claims against third parties

(1) Where:

(a) an amount of compensation under this Act:

(i) is paid to an employee in respect of an injury to the employee or in respect of the loss of, or damage to, property used by the employee; or

(ii) is paid for the benefit of a dependant of a deceased employee in respect of an injury that resulted in the death of the employee;

(b) the injury, loss, damage or death occurred in circumstances that appear to create a legal liability in a person to pay damages in respect of the injury, loss, damage or death; and

Authorised Version C2019C00166 registered 01/05/2019

(c) a claim against the person for the purpose of recovering such damages has not been made by the employee or by or for the benefit of the dependant, or, having been made, has not been prosecuted;

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

(2) If the MRCC 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 the MRCC makes, or takes over the conduct of, a claim under this section, the MRCC 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) The employee or dependant must sign any document relevant to a claim made or taken over by the MRCC under this section (including the settlement of the claim or of any proceedings arising out of the claim), being a document that the MRCC requires the employee or dependant to sign.

(4A) If the employee or dependant fails to sign a document in accordance with a requirement under subsection (4):

(a) if the claim is not before a court or tribunal at the time of the failure—the Federal Court of Australia, on the application of the MRCC, may direct that the document be signed on the employee or dependant's behalf by a person appointed by the MRCC; and

Authorised Version C2019C00166 registered 01/05/2019

(b) otherwise—the court or tribunal in which proceedings relating to the claim are being heard, on the application of the MRCC, may so direct.

(4B) If the MRCC proposes to make an application under subsection (4A):

(a) the MRCC must notify the employee or dependant concerned of the fact that it is proposing to so apply; and

(b) the employee or dependant concerned has a right of representation in the hearing of that application.

(5) If the MRCC makes or takes over the conduct of a claim under this section:

(a) the employee or dependant must comply with any reasonable requirement of the MRCC for the purposes of the claim; and

(b) if the employee or dependant fails to comply with such a requirement, the right of the employee or dependant to compensation under this Act in respect of the injury, loss, damage or death to which the claim relates is suspended until such time as the employee or dependant complies with the requirement.

(5A) However, paragraph (5)(b) does not operate to suspend the employee's right to compensation for the cost of medical treatment that is payable under section 16.

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

(7) Any damages obtained as a result of a claim made or taken over by the MRCC 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 employee or dependant under this Act in respect of the injury, loss, damage or death to which the claim relates; and

Authorised Version C2019C00166 registered 01/05/2019

(b) the amount of any costs incidental to the claim paid by the Commonwealth.

The Commonwealth must pay the balance (if any) to the employee or dependant.

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

(9) In this section:

person does not include the Commonwealth, a Commonwealth authority, a licensed corporation or an employee.

51 Payment of damages by persons to the Commonwealth

(1) Where a person appears to be liable:

(a) to pay damages to an employee in respect of an injury to the employee, or in respect of the loss of, or damage to, property used by the employee, being an injury, loss or damage in respect of which an amount of compensation has been paid under this Act; or

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

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

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

Authorised Version C2019C00166 registered 01/05/2019

(d) if damages against the person are awarded to the employee 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 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 employee or dependant to the Commonwealth under section 48 or 49 if the damages had been paid to the employee or dependant.

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

(a) a person has agreed:

(i) to pay damages to an employee in respect of an injury to the employee, or in respect of the loss of, or damage to, property used by the employee, being an injury, loss or damage in respect of which an amount of compensation has been paid under this Act; or

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

(b) damages against a person have been awarded:

(i) to an employee in proceedings arising out of a claim made in respect of an injury to the employee or in respect of the loss of, or damage to, property used by the employee, being an injury, loss or damage in respect of which an amount of compensation has been paid under this Act; or

(ii) to a dependant of a deceased employee in proceedings arising out of a claim made in respect of the death of the employee, where that death resulted from an injury in respect of which an amount of compensation has been paid under this Act;

the MRCC may, by notice in writing given to the person, require the 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 employee or dependant to the Commonwealth under

Authorised Version C2019C00166 registered 01/05/2019

section 48 or 49 if the damages had been paid to or in respect of the employee or dependant.

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

(a) if all of the damages had been paid—the notice has no force or effect; or

(b) if part only of the damages had been paid—the reference in that subsection to the amount of the damages shall be read as a reference to so much of that amount as had not been paid.

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

(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 employee or dependant and of the liability (if any) of the employee or dependant to the Commonwealth under section 48 or 49.

(6) In this section:

person does not include the Commonwealth, a Commonwealth authority, a licensed corporation or an employee.

52 Compensation not payable both under Act and under award

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

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

Authorised Version C2019C00166 registered 01/05/2019

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

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

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

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

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

(b) an award, determination or order made, or agreement entered into, under a law of the Commonwealth relating to workplace relations; or

(c) an award, determination or order made, or agreement entered into, under a law of a State or Territory.

52A The Commonwealth's rights and obligations in respect of certain action for non-economic loss

(1) If:

(a) an employer has paid the Commonwealth an amount to cover liability for actions for non-economic loss brought by its employees; and

Authorised Version C2019C00166 registered 01/05/2019

(b) an employee takes action for non-economic loss against the employer or another employee of the employer (the ***party claimed against***);

this section applies in relation to such action.

(2) The MRCC may, at any time during the course of the action to which this section applies:

(a) take over the conduct of that action on behalf of the party claimed against in the proceeding; and

(b) if the action is before a court and the MRCC thinks it appropriate to do so—apply to the court to join any other person as a party to the action.

(3) If the MRCC takes over the conduct of the action, it becomes liable to pay all costs of or incidental to the prosecution of the action that would otherwise be payable by the party claimed against other than costs unreasonably incurred by that party.

(4) If the MRCC takes over the conduct of an action to which this section applies, the MRCC 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 the MRCC takes over the conduct of an action to which this section applies, the party claimed against must comply with any reasonable requirement of the MRCC for the purpose of the action including signing of any document relevant to the conduct or settlement of the action.

(6) If the party claimed against fails to sign a document in accordance with a requirement under subsection (5):

(a) if the action to which this section applies is not before a court or tribunal at the time of the failure—the Federal Court of

Authorised Version C2019C00166 registered 01/05/2019

Australia, on the application of the MRCC, may direct that the document be signed on the party's behalf by a person appointed by the MRCC; and

(b) otherwise—the court or tribunal in which proceedings relating to the action are being heard, on the application of the MRCC, may so direct.

(7) If the MRCC proposes to make an application under subsection (6):

(a) the MRCC must notify the party concerned of the fact that it is proposing to so apply; and

(b) the party concerned has a right of representation in the hearing of that application.

(8) If, in an action to which this section applies:

(a) damages are awarded against the party claimed against; or

(b) a settlement is agreed on that involves the payment of an amount by the party claimed against;

then, whether or not the conduct of that action was taken over by the MRCC, the MRCC 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 the MRCC under subsection (8) is taken to have been made in satisfaction of the liability of the party claimed against to whom the payment relates.

(10) If, in an action to which this section applies the conduct of which has been taken over by the MRCC, any amount is payable by way of costs to the party claimed against, that amount is payable to the Commonwealth.

Authorised Version C2019C00166 registered 01/05/2019

Part V—Claims for compensation

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

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

(a) as soon as practicable after the employee becomes aware of the injury; or

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

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

(a) as soon as practicable after the employee becomes aware that the accident had resulted in the loss or damage; or

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

(3) Where:

(a) a notice purporting to be a notice referred to in this section has been given to the relevant authority;

(b) the notice, as regards the time of giving the notice or otherwise, failed to comply with the requirements of this section; and

(c) the relevant authority would not, by reason of the failure, be prejudiced if the notice were treated as a sufficient notice, or the failure resulted from the death, or absence from Australia, of a person, from ignorance, from a mistake or from any other reasonable cause;

Authorised Version C2019C00166 registered 01/05/2019

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

54 Claims for compensation

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

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

(a) a written claim in accordance with the form approved by the MRCC for the purposes of this paragraph; and

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

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

(4) The MRCC must cause a copy of any claim it receives to be given to the Secretary of the Defence Department.

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

55 Survival of claims

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

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

Authorised Version C2019C00166 registered 01/05/2019

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

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

56 Claims may not be made in certain cases

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

57 Power to require medical examination

(1) Where:

(a) a notice has been given to a relevant authority under section 53 in relation to an employee; or

(b) an employee has made a claim for compensation under section 54;

the relevant authority may require the employee to undergo an examination by one legally qualified medical practitioner nominated by the relevant authority.

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

(3) The relevant authority shall pay the cost of conducting any examination required under this section and is liable to pay to the employee an amount equal to the amount of the expenditure reasonably incurred by the employee in making a necessary

Authorised Version C2019C00166 registered 01/05/2019

journey in connection with the examination or remaining, for the purpose of the examination, at a place to which the employee has made a journey for that purpose.

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

(a) the means of transport available to the employee for the journey;

(b) the route or routes by which the employee could have travelled; and

(c) the accommodation available to the employee.

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

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

58 Power to request the provision of information

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

(a) has information or a document that is relevant to the claim; or

(b) may obtain such information or a copy of such a document without unreasonable expense or inconvenience;

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

(2) A claimant who has received a notice under subsection (1) shall be taken to have complied with the notice if the claimant gives the relevant authority the information or document specified in the

Authorised Version C2019C00166 registered 01/05/2019

notice within 28 days after the date of notice or within such further period (if any) as the relevant authority has allowed.

(3) Where a claimant refuses or fails, without reasonable excuse, to comply with a notice under subsection (1), the relevant authority may refuse to deal with the claim until the claimant gives the relevant authority the information, or a copy of the document, specified in the notice.

59 Certain documents to be supplied on request

(1) A relevant authority shall:

(a) on request by a claimant—give to the claimant any document held by the authority that relates to the claimant's claim; or

(b) on request by the Commonwealth in respect of a claim affecting the Commonwealth or a Commonwealth authority—give to the Commonwealth any document held by the relevant authority that relates to the claim; or

(c) on request by a licensed corporation in respect of a claim affecting the corporation—give to the corporation any document held by the relevant authority that relates to the claim.

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

(a) a reference to a claim shall be read as a reference to the request under that section; and

(b) a reference to the claimant shall be read as a reference to the person who made the request.

Authorised Version C2019C00166 registered 01/05/2019

Part VI—Reconsideration and review of determinations

60 Interpretation

(1) In this Part:

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

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

determination means a determination, decision or requirement made under section 8, 14, 15, 16, 17, 18, 19, 20, 21, 21A, 22, 24, 25, 27, 29, 29A, 30, 31, 36, 37 or 39, under paragraph 114B(5)(a) or under Division 3 of Part X.

determining authority, in relation to a determination, means the person who made the determination.

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

(2) For the purposes of this Part, the parties to proceedings instituted under this Part are:
  (a) the applicant; and
  (b) if the applicant is not the claimant—the claimant; and
  (c) the MRCC.

61 Determinations to be notified in writing

(1A) The determining authority must consider and determine each claim for compensation under section 14 within the period prescribed by the regulations.

Authorised Version C2019C00166 registered 01/05/2019

(1) As soon as practicable after a determining authority makes a determination, it shall cause to be served on the claimant a notice in writing setting out:
   (a) the terms of the determination;
   (b) the reasons for the determination; and
   (c) a statement to the effect that the claimant may, if dissatisfied with the determination, request a reconsideration of the determination under subsection 62(2).

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

62 Reconsideration of determinations

(1) A determining authority may, on its own motion:
   (a) reconsider a determination made by it; or
   (b) cause such a determination to be reconsidered by a person to whom its power under this section is delegated, being a person other than the person who made, or was involved in the making of, the determination;

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

(2) A request to a determining authority to reconsider a determination made by it may be made by:
   (a) the claimant; or
   (b) if the determination affects the Commonwealth—the Commonwealth.

(3) A request for reconsideration of a determination shall:
   (a) set out the reasons for the request; and
   (b) be given to the determining authority within 30 days after the day on which the determination first came to the notice of the

Authorised Version C2019C00166 registered 01/05/2019

person making the request, or within such further period (if any) as the determining authority, either before or after the expiration of that period, allows.

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

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

(6) The determining authority or person must decide a request made by a claimant to reconsider a determination within the period prescribed by the regulations.

63 Reviewable decision to be notified in writing

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

(a) the terms of the decision;

(b) the reasons for the decision; and

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

64 Applications to the Administrative Appeals Tribunal

(1) Application to the Administrative Appeals Tribunal for review of a reviewable decision may be made by:

(a) the claimant; or

(b) if the decision affects the Commonwealth—the Commonwealth.

Authorised Version C2019C00166 registered 01/05/2019

(3) Despite section 27 of the *Administrative Appeals Tribunal Act 1975*, a person may not make an application to the Administrative Appeals Tribunal for a review of a reviewable decision except as provided by subsection (1) of this section.

65 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 this section called ***the Act***) in relation to a reviewable decision.

(3) Section 18C of the 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.

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

66 Evidence in proceedings before Administrative Appeals Tribunal

(1) Where:

(a) a claimant who has instituted proceedings under this Part seeks to adduce any matter in evidence before the Administrative Appeals Tribunal in those proceedings; and

(b) the claimant had not disclosed that matter to the Tribunal at least 28 days before the day fixed for the hearing of those proceedings;

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

(2) Where:

(a) a determining authority has determined a claim and, before doing so, gave the claimant a notice under section 58 requesting the claimant to give the authority the information, document or copy of the document, specified in the notice;

(b) the claimant failed to comply with the notice; and

Authorised Version C2019C00166 registered 01/05/2019

(c) the claimant had the information, document or copy, or could have obtained the information, document or copy without unreasonable expense or inconvenience before the determination was made;

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

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

(a) the claimant provides a statement of reasons why he or she failed to comply with the notice under section 58; and

(b) the Tribunal is satisfied that there are special circumstances justifying the admission of the information, document or copy in evidence.

67 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 that reviewable decision shall be borne by that party.

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

(3) Where:

(a) the MRCC has determined a claim (in this subsection called the ***original determination***);

(b) the MRCC, before making that determination, gave the claimant a notice under section 58 requesting the claimant to give it the information specified in the notice (in this subsection called the ***relevant information***);

(c) the claimant failed to comply with the notice;

Authorised Version C2019C00166 registered 01/05/2019

(d) at the time when the MRCC determined the claim, it did not have the relevant information nor was the relevant information reasonably available to it;

(e) after the claim was determined, the claimant disclosed the relevant information to the MRCC or to the Administrative Appeals Tribunal;

(f) the MRCC reconsidered the original determination under subsection 62(1) and made a determination more favourable to the claimant than the original determination;

(g) the MRCC 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;

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

(4) Where:

(a) the MRCC has determined a claim (in this section called the ***original determination***);

(b) the MRCC, before making that determination, gave the claimant a notice under section 58 requesting the claimant to give it a document, or a copy of the document, specified in the notice (in this subsection called the ***relevant document***);

(c) the claimant failed to comply with the notice;

(d) at the time when the MRCC determined the claim, it did not have the information contained in the relevant document nor was that information reasonably available to it;

(e) after the claim was determined, the claimant gave the document, or a copy of the document, or the information contained in the relevant document, to the MRCC or to the Administrative Appeals Tribunal;

(f) the MRCC reconsidered the original determination under subsection 62(1), and made a determination more favourable to the claimant than the original determination;

Authorised Version C2019C00166 registered 01/05/2019

(g) the MRCC is satisfied that, if it had had the information contained in the relevant document at the time when the original determination was made, it would have made a determination more favourable to the claimant than the original determination; and

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

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

(5) Where the MRCC 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) The MRCC shall give a copy of a declaration made by it under subsection (3) or (4) to the claimant.

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

(8) Where, in any proceedings instituted by the 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, shall be paid by the Commonwealth.

(8A) Subject to this section, the Administrative Appeals Tribunal may order that the costs incurred by the claimant of any proceedings instituted by the Commonwealth be paid by the Commonwealth.

Authorised Version C2019C00166 registered 01/05/2019

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

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

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

(a) the MRCC, before making the reviewable decision, gave the claimant a notice under section 58 requesting the claimant to give the MRCC information specified in the notice (in this subsection called the ***relevant information***); and

(b) the Tribunal is satisfied that:

(i) the claimant failed to comply with that notice;

(ii) at the time when the MRCC made the reviewable decision, it did not have the relevant information, nor was the relevant information reasonably available to it; and

(iii) if the MRCC had had the relevant information at the time when it made the reviewable decision it would have made a decision more favourable to the claimant than the reviewable decision.

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

(a) the determining authority, before making the reviewable decision, gave the claimant a notice under section 58

Authorised Version C2019C00166 registered 01/05/2019

requesting the claimant to give the authority a copy of the document specified in the notice (in this subsection called the ***relevant document***); and

(b) the Tribunal is satisfied that:

(i) the claimant failed to comply with that notice;

(ii) at the time when the authority made the reviewable decision, it did not have the information contained in the relevant document, nor was that information reasonably available to it; and

(iii) if the authority had had the information contained in the relevant document at the time when it made the reviewable decision it would have made a decision more favourable to the claimant than the reviewable decision.

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

(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.

Authorised Version C2019C00166 registered 01/05/2019

Part IX—Miscellaneous

109A Jurisdiction of courts with respect to extraterritorial offences

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

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

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

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

(5) In this section:

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

109 Determinations to be in writing

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

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

110 Money paid to relevant authority for benefit of person

(1) Where any money is payable under this Act to an employee who is under a legal disability, the money shall be paid to, or in

Authorised Version C2019C00166 registered 01/05/2019

accordance with the directions of, the relevant authority for the benefit of the employee and, when so paid, shall, for the purposes of this Act other than this section, be deemed to have been paid to the employee.

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

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

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

(5) The MRCC may establish trust funds for the purposes of this section.

111 Provisions applicable on death of beneficiary

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

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

Authorised Version C2019C00166 registered 01/05/2019

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

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

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

112 Assignment, set-off or attachment of compensation

(1) An assignment of any compensation payable under this Act is void as against the Commonwealth.

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

(3) Except as provided by the *Maintenance Orders (Commonwealth Officers) Act 1966*, the *Child Support Act 1988* or the *Social Security Act 1991*, or by, or by regulations under, the *Family Law Act 1975*, any compensation payable under this Act is not subject to attachment.

112A Making of compensation payments through employers of employees paid out of relevant money

(1) This section applies if:

Authorised Version C2019C00166 registered 01/05/2019

(a) the Commonwealth is liable to pay an amount of compensation under Division 3 of Part II to an employee; and

(b) payments by the employer to the employee of salary or wages (ignoring section 116) are made out of relevant money.

(2) The MRCC may, on behalf of the Commonwealth, instead make a payment to the employer in respect of the compensation.

(3) Before making the payment, the MRCC must advise the employer of its intention to do so (the payment is called the ***advised payment***).

(4) The employer must:

(a) before receiving the advised payment, make a payment of an equal amount (the ***anticipatory payment***) to the employee; or

(b) on receiving the advised payment, hold it for the benefit of the employee until such time as the employer pays it to the employee.

(5) When the employer pays the employee the anticipatory payment, or the payment that it holds for the benefit of the employee, the payment is taken for the purposes of this Act to be a payment by the Commonwealth in discharge of its liability to pay the compensation.

(6) Also, in the case of the anticipatory payment:

(a) to avoid doubt, the provision of an Act that appropriates the Consolidated Revenue Fund for the purposes of any payments by the employer to the employee of salary or wages (ignoring section 116) also appropriates the Consolidated Revenue Fund for the purposes of the anticipatory payment; and

(b) when the advised payment is received by the employer, it is taken to be:

(i) a repayment of the anticipatory payment; and

Authorised Version C2019C00166 registered 01/05/2019

(ii) the receipt of an amount for the purposes of section 74 of the *Public Governance, Performance and Accountability Act 2013*.

112B Making of compensation payments through employers of employees not paid out of relevant money

(1) This section applies if:

(a) the Commonwealth is liable to pay an amount of compensation under Division 3 of Part II to an employee; and

(b) payments by the employer to the employee of salary or wages (ignoring section 116) are not made out of relevant money.

(2) The MRCC may, on behalf of the Commonwealth, instead make a payment to the employer in respect of the compensation.

(3) Before making the payment, the MRCC must advise the employer of its intention to do so (the payment is called the ***advised payment***).

(4) The employer must, either before or after receiving the advised payment, make a payment of an equal amount to the employee, out of money that the employer holds on its own account.

(5) The payment by the employer is taken for the purposes of this Act to be a payment by the Commonwealth in discharge of its liability to pay the compensation.

(6) When the advised payment is received by the employer, it is money that the employer holds on its own account.

113 Recovery of amounts due to the Commonwealth

Where:

(a) a person (in this section called ***the debtor***) is liable to pay an amount to the Commonwealth under this Act; and

(b) the Commonwealth holds on behalf of the debtor:

Authorised Version C2019C00166 registered 01/05/2019

(i) money, being compensation payable under this Act for the benefit of the debtor; or

(ii) investments acquired out of money of a kind referred to in subparagraph (i);

the Commonwealth 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 the Commonwealth to the debtor.

114 Recovery of overpayments

(1) Subject to subsection (1A), if:

(a) an amount of compensation under this Act has been paid to a person in consequence of a false or misleading statement or representation or in consequence of a failure or omission to comply with a provision of this Act;

(b) an amount of compensation that has been paid to a person under this Act should not have been paid; or

(c) a person is liable to pay an amount to a relevant authority under this Act;

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

(1A) Paragraph (1)(b) does not apply to an amount of compensation that the relevant authority is entitled to recover under section 114B.

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

114A Notice to the MRCC of retirement of employee

(1) If:

Authorised Version C2019C00166 registered 01/05/2019

(a) an employee of the Commonwealth is receiving, or is entitled to receive, compensation under this Act; and

(b) the appropriate officer in relation to the employee becomes aware that the employee has retired from his or her employment;

then, as soon as practicable after becoming so aware, the officer must give written notice to the MRCC stating that the employee has retired and the date of the retirement and identifying the superannuation scheme of which the employee was a member at the time of his or her retirement.

(2) In this section:

appropriate officer, in relation to an employee, means:

(a) if the employee is employed in an Entity—the principal officer of that Entity; or

(b) if the employee is employed by the Commonwealth otherwise than in an Entity—a person prescribed by the regulations; or

(c) if the employee is employed by a Commonwealth authority—the principal officer of that authority.

114B Recovery of overpayment to retired employee

(1) If:

(a) an employee retires from his or her employment; and

(b) the retired employee is or may be entitled to a pension or a lump sum, or both a pension and a lump sum, under a superannuation scheme; and

(c) the MRCC is of the opinion that the retired employee may have been paid, or might be paid, amounts of compensation under this Act in excess of the amounts that he or she was entitled to receive because of section 20, 21 or 21A;

the following provisions of this section apply.

(2) The MRCC may give written notice to the administrator of the scheme:

Authorised Version C2019C00166 registered 01/05/2019

(a) stating that the retired employee may receive, or may have received, an overpayment of compensation; and

(b) requiring the administrator to tell the MRCC whether the retired employee has received any payment in respect of his or her entitlement referred to in paragraph (1)(b) or whether all the retired employee's benefits under the scheme have been deferred; and

(c) requiring the administrator, if the retired employee has not received any such payment (unless all the retired employee's benefits under the scheme have been deferred):

(i) not to pay any pension or lump sum to the retired employee until the administrator receives a notice from the MRCC under subsection (5); and

(ii) to give the MRCC, as soon as practicable, particulars of the rate of pension, or the lump sum worked out as at the date of retirement, or the rate of pension and the lump sum as so worked out, as the case may be, that is payable to the retired employee under the superannuation scheme.

(3) The MRCC must give to the retired employee a written notice stating that it has given a notice to the administrator of the scheme under subsection (2) and explaining how this section works.

(4) The following provisions apply if the retired employee has not received any payment in respect of his or her entitlement referred to in paragraph (1)(b) but do not apply if all the retired employee's benefits under the scheme have been deferred.

(5) When the MRCC 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 retired employee, then the MRCC must, within 2 working days after receiving those particulars:

(a) determine whether an overpayment of compensation to the employee has occurred; and

(b) give written notice to the administrator:

Authorised Version C2019C00166 registered 01/05/2019

(i) if it determines that no overpayment has occurred—stating that fact; or

(ii) otherwise—stating the amount of the overpayment and requiring the administrator to pay that amount to the MRCC in accordance with this section.

(6) The MRCC must not reduce the rate or amount of compensation payable to the retired employee under this Act until it has given to the administrator of the superannuation scheme the notice referred to in subsection (5).

(7) The amount to be stated in the notice under subparagraph (5)(b)(ii) is the amount by which the sum of the amounts of any compensation paid after the retirement of the employee exceeds the sum of the amounts of compensation that should have been paid because of section 20, 21 or 21A, as the case requires.

(8) The administrator of the superannuation scheme is to pay the amount of the overpayment of compensation to the MRCC in accordance with subsections (9) and (10) out of the payments of pension or of a lump sum that would otherwise have been made by the administrator to the retired employee.

(9) If the amount of any payment of pension or of a lump sum that would otherwise have been made by the administrator to the relevant employee on any day is less than or equal to the adjusted overpayment worked out as at that day, that amount is to be paid by the administrator to the MRCC instead of to the retired employee.

(10) If the amount of any payment of pension or of a lump sum that would otherwise have been made by the administrator to the relevant employee on any day is greater than the adjusted overpayment worked out as at that day, so much of that amount as is equal to that adjusted overpayment is to be paid by the administrator to the MRCC instead of to the retired employee.

(11) For the purposes of subsections (9) and (10), the adjusted overpayment as at a particular day is the amount of the original overpayment less any amounts that have been paid by the

Authorised Version C2019C00166 registered 01/05/2019

administrator to the MRCC before that day in reduction of the original overpayment.

(12) The payment by the administrator of an amount to the MRCC under a notice given under subsection (5) discharges, to the extent of that amount:

(a) the liability of the administrator to pay that amount to the retired employee; and

(b) the liability of the employee to pay that amount to the MRCC.

(13) The administrator of a superannuation scheme must comply with a requirement made of the administrator under this section by the MRCC. However, failure to comply with the requirement is not an offence.

(14) This section has effect despite:

(a) sections 143 and 143A of the *Superannuation Act 1922*; and

(b) sections 85 and 85A of the *Defence Force Retirement Benefits Act 1948*; and

(c) sections 129 and 130 of the *Defence Force Retirement and Death Benefits Act 1973*; and

(d) sections 118 and 119 of the *Superannuation Act 1976*.

(15) In this section:

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

114C The MRCC may write off debt

(1) The MRCC may, on behalf of the Commonwealth, decide, in writing, to write off a debt due to the Commonwealth.

(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

Authorised Version C2019C00166 registered 01/05/2019

(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 the MRCC 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.

114D The MRCC may waive debt

(1) The MRCC may, on behalf of the Commonwealth, decide, in writing, to waive the Commonwealth's right to recover from a person the whole or a part of a debt due to the Commonwealth.

(2) In exercising the power under subsection (1), the MRCC must act in accordance with directions from time to time in force under subsection (3).

(3) The Minister may, by legislative instrument:
(a) give a direction to the MRCC relating to the exercise of its power under subsection (1); and
(b) revoke or vary a direction so given.

(4) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a direction given by the Minister under subsection (3).

(5) A decision of the MRCC 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 the MRCC waives its rights to recover, this is a permanent bar to recovery of the debt—the debt effectively ceases to exist.

115 Deduction of overpayments of repatriation pensions

(1A) Where:

Authorised Version C2019C00166 registered 01/05/2019

(a) an amount of pension has been paid to a person under the *Veterans' Entitlements Act 1986* in respect of the incapacity or death of a veteran who has rendered operational service within the meaning of Part II of that Act; and

(b) that amount is not payable to that person by virtue of Division 5A of Part II of the *Veterans' Entitlements Act 1986*;

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

(1) Where:

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

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

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

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

(a) an amount specified in the certificate has been paid by way of pension under the *Veterans' Entitlements Act 1986* to a person specified in the certificate;

(b) that amount was paid in respect of the incapacity or death of a person specified in the certificate;

(c) the person referred to in paragraph (b) is or was a veteran within the meaning of Part II of that Act or a member of the Forces, or a member of a Peacekeeping Force, within the meaning of Part IV of that Act; and

Authorised Version C2019C00166 registered 01/05/2019

(d) by virtue of Division 5A of Part II, or section 74, of that Act, the amount referred to in paragraph (a) is not payable to the person referred to in paragraph (a).

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

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

116 Employees on compensation leave

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

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

(b) long service leave entitlements continue to accrue in relation to the employee during the whole of the period of the post-determination compensation leave;

as if the employee were not absent from work.

(2) In this section:

post-determination compensation leave means compensation leave that takes place after the end of the pre-determination period in relation to the claim for compensation.

Authorised Version C2019C00166 registered 01/05/2019

118 Double benefits

(1) If:

(a) an employee recovers State workers' compensation in respect of an injury or the loss of, or damage to, property used by the employee; or

(b) State workers' compensation is recovered by, or for the benefit of, a dependant of a deceased employee;

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

(2) If, after any compensation has been paid by the Commonwealth under this Act:

(a) to an employee in respect of an injury or the loss of, or damage to, property used by the employee; or

(b) to, or for the benefit of, a dependant of a deceased employee;

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

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

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

Authorised Version C2019C00166 registered 01/05/2019

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

(6) In this section:

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

119 Compensation where State compensation payable

(1) If:

(a) an employee recovers State compensation in respect of an injury to the employee or in respect of the loss of, or damage to, property used by the employee; or

(b) State compensation is recovered by, or for the benefit of, a dependant of a deceased employee;

the succeeding provisions of this section have effect.

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

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

(a) the amount of the compensation paid by it under this Act; or

Authorised Version C2019C00166 registered 01/05/2019

(b) the amount of the State compensation recovered by the employee or for the benefit of the dependant;

whichever is less.

(4) Where:

(a) a person (in this subsection called ***the debtor***) is liable to pay an amount to the Commonwealth under this section; and

(b) any other person holds on behalf of the debtor:

(i) money, being compensation payable under this Act for the benefit of, or State compensation payable to, the debtor; or

(ii) investments acquired out of money of a kind referred to in subparagraph (i);

the other person shall:

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

(d) pay the amount so deducted to the 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 Act that was paid for the benefit of a dependant does not include a reference to compensation paid under subsection 17(5).

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

Authorised Version C2019C00166 registered 01/05/2019

an injury, loss or damage, in respect of which compensation is payable under this Act to that employee or that dependant, as the case may be.

(7) In this section:

State compensation means compensation recoverable under a specified law.

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

120 Notice of departure from Australia etc.

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

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

(a) stating that the person proposes to leave Australia; and

(b) specifying the day on which the person proposes to leave.

(3) Where the person has left Australia (whether or not the person proposes to return to Australia) without giving a notice of the kind referred to in subsection (2) to the MRCC, the person shall, within 7 days after the day on which the person left Australia, send the MRCC a notice in writing:

(a) stating that the person has left Australia; and

(b) specifying the day on which the person did so.

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

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

Authorised Version C2019C00166 registered 01/05/2019

(b) within 7 days after the expiration of each successive period of 3 months (if any) ending while the person is still absent from Australia;

give the MRCC a notice in writing setting out particulars of the residential address of the person on the day on which the notice is given.

Penalty: 5 penalty units.

(5) Subsection (4) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

121B Regulations modifying the operation of this Act

(1) The regulations may modify the operation of this Act.

(2) Before the Governor-General makes regulations under subsection (1), the Minister must be satisfied that it is necessary or desirable to make the regulations to ensure that no person (except the Commonwealth) is disadvantaged by the enactment of this Act.

122 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

122A Legislative rules

(1) The MRCC may, by legislative instrument, make rules (***legislative rules***) prescribing matters:

(a) required or permitted by this Act to be prescribed by the legislative rules; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) To avoid doubt, the legislative rules may not do the following:

Authorised Version C2019C00166 registered 01/05/2019

(a) create an offence or civil penalty;
(b) provide powers of:
    (i) arrest or detention; or
    (ii) entry, search or seizure;
(c) impose a tax;
(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
(e) directly amend the text of this Act.

Authorised Version C2019C00166 registered 01/05/2019

Part X—Transitional provisions

Division 1—Preliminary

123 Interpretation

In this Part:

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

(a) the amount of compensation payable to the former employee under this Act; and

(b) the employee's superannuation amount.

commencing day means the day on which this Part commences.

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

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

(a) the amount of compensation payable per week to the former employee under the 1971 Act; and

(b) the employee's superannuation amount.

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

Authorised Version C2019C00166 registered 01/05/2019

123A Injuries suffered before the commencing day

A reference in this Part to an injury suffered before the commencing day is a reference to an injury within the meaning of whichever of the 1912 Act, the 1930 Act or the 1971 Act was in force when the injury was suffered, as that Act was then in force.

Authorised Version C2019C00166 registered 01/05/2019

Division 2—Transitional provisions

124 Application of Act to pre-existing injuries

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

(1A) Subject to this Part, a person is entitled to compensation under this Act in respect of an injury, loss or damage suffered before the commencing day if compensation was, or would have been, payable to the person in respect of that injury, loss or damage under the 1912 Act, the 1930 Act or the 1971 Act.

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

(a) where the injury, loss or damage was suffered before the commencement of the 1930 Act—under the 1912 Act;

(b) where the injury, loss or damage was suffered after the commencement of the 1930 Act but before the commencement of the 1971 Act—under the 1930 Act as in force when the injury, loss or damage was suffered; or

(c) in any other case—under the 1971 Act as in force when the injury, loss or damage was suffered.

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

(a) the person received compensation of a lump sum in respect of that impairment or death under the 1912 Act, the 1930 Act or the 1971 Act; or

(b) the person was not entitled to receive compensation of a lump sum in respect of that impairment or death:

Authorised Version C2019C00166 registered 01/05/2019

(i) where the impairment or death occurred before the commencement of the 1930 Act—under the 1912 Act;

(ii) where the impairment or death occurred after the commencement of the 1930 Act but before the commencement of the 1971 Act—under the 1930 Act as in force when the impairment or death occurred; or

(iii) in any other case—under the 1971 Act as in force when the impairment or death occurred.

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

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

(b) where the impairment or death occurred after the commencement of the 1930 Act but before the commencement of the 1971 Act—the 1930 Act as in force when the impairment or death occurred; or

(c) in any other case—the 1971 Act as in force when the impairment or death occurred.

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

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

(a) that person received weekly payments of compensation in respect of that death or incapacity in relation to that period under the 1912 Act, the 1930 Act or the 1971 Act; or

(b) that person was not entitled to receive weekly payments of compensation in respect of that death or incapacity in relation to that period:

Authorised Version C2019C00166 registered 01/05/2019

(i) where the death or period of incapacity occurred before the commencement of the 1930 Act—under the 1912 Act;

(ii) where the death or period of incapacity occurred after the commencement of the 1930 Act but before the commencement of the 1971 Act—under the 1930 Act as in force when the death or period of incapacity occurred; or

(iii) in any other case—under the 1971 Act as in force when the death or period of incapacity occurred.

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

(a) where the period occurred before the commencement of the 1930 Act—the 1912 Act;

(b) where the period occurred after the commencement of the 1930 Act but before the commencement of the 1971 Act—the 1930 Act as in force during the period; or

(c) in any other case—the 1971 Act as in force during the period.

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

(a) an amount was paid in respect of that cost or expenditure under the 1912 Act, the 1930 Act or the 1971 Act; or

(b) an amount was not payable in respect of that cost or expenditure:

(i) where the liability for the cost arose, or the expenditure was incurred, before the commencement of the 1930 Act—under the 1912 Act;

Authorised Version C2019C00166 registered 01/05/2019

(ii) where the liability arose, or the expenditure was incurred, after the commencement of the 1930 Act but before the commencement of the 1971 Act—under the 1930 Act as in force when the liability arose or the expenditure was incurred; or

(iii) in any other case—under the 1971 Act as in force when the liability arose or the expenditure was incurred.

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

(a) where the liability for the cost arose, or the expenditure was incurred, before the commencement of the 1930 Act—the 1912 Act;

(b) where the liability arose, or the expenditure was incurred, after the commencement of the 1930 Act but before the commencement of the 1971 Act—the 1930 Act as in force when the liability arose or the expenditure was incurred; or

(c) in any other case—the 1971 Act as in force when the liability arose or the expenditure was incurred.

(10) Where:

(a) proceedings for the recovery of compensation under the 1912 Act, in respect of any injury suffered before the commencement of the 1930 Act, were not maintainable by a person because of section 5 of the 1912 Act;

(b) a claim for compensation by a person under the 1930 Act, in respect of an injury suffered after the commencement of the 1930 Act but before the commencement of the 1971 Act, was not admissible because of section 16 of the 1930 Act; or

(c) a claim for compensation by a person under the 1971 Act, in respect of an injury suffered after the commencement of the 1971 Act but before 1 July 1986, was not admissible because

Authorised Version C2019C00166 registered 01/05/2019

of section 54 of the 1971 Act, as that section was in force before 1 July 1986;

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

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

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

125 Payments under previous Acts

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

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

126 Notices, claims etc. under previous Acts

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

(a) section 5 of the 1912 Act;

(b) section 16 of the 1930 Act; or

(c) section 53 of the 1971 Act;

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

Authorised Version C2019C00166 registered 01/05/2019

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

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

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

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

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

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

127 Settlements and determinations under previous Acts

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

Authorised Version C2019C00166 registered 01/05/2019

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

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

128 Liability under previous Acts

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

129 Application for review and other proceedings under previous Acts

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

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

(aa) the determination were a determination by the MRCC within the meaning of Part VI of this Act; and

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

Authorised Version C2019C00166 registered 01/05/2019

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

(3) Where proceedings under Part V of the 1971 Act in relation to a determination are continued under subsection (2), Part VI of this Act applies to the proceedings as if the determination were a reviewable decision by the MRCC within the meaning of Part VI of this Act.

129A Reconsideration and review of certain determinations under 1971 Act

(1) The MRCC may, on its own motion, reconsider under section 62 of this Act a determination under the 1971 Act having effect immediately before the commencing day but not covered by subsection 129(1) and, for that purpose, section 62 of this Act applies as if:

(a) the person in respect of whom the determination was made were a claimant under this Act; and

(b) the determination were a determination by the MRCC within the meaning of Part VI of this Act.

(2) Part VI of this Act applies to a decision of the MRCC on a reconsideration of a determination mentioned in subsection (1) as if the decision were a reviewable decision by the MRCC within the meaning of that Part.

130 Money and investments held under 1971 Act

All money and investments held immediately before the commencing day for the benefit of a person or persons by the Commissioner for Employees' Compensation under the 1971 Act are, by force of this section, vested in the relevant authority and

Authorised Version C2019C00166 registered 01/05/2019

shall be held by that authority for the benefit of that person or those persons, as the case may be.

Authorised Version C2019C00166 registered 01/05/2019

Division 3—Special transitional provisions relating to certain former employees

131 Former employees under 65 who are in receipt of superannuation benefits and are unable to engage in any work

(1) This section applies to a former employee who:

(a) on the commencing day, was under 65 and in receipt of a pension under a superannuation scheme; and

(b) is not capable of engaging in any work.

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

(2A) If, as a result of an increase in the amount of a former employee's normal weekly earnings, the amount of combined benefit payable to the former employee under subsection (2) is less than 70% of those increased normal weekly earnings, the amount of compensation must be increased or further increased (as the case may be) until it is equal to 70% of those increased normal weekly earnings.

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

Authorised Version C2019C00166 registered 01/05/2019

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

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

(5) Whenever the superannuation amount of a former employee referred to in subsection (2), (3) or (4) is increased, the amount of compensation payable under that subsection shall be reduced, or further reduced, as the case requires, by:

(a) an amount equal to the amount of the increase; or

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

whichever is less.

(6) Subsection (5) does not require a reduction or further reduction in the amount of compensation payable to a former employee under subsection (2), (3) or (4) where the reduction or further reduction would result in a combined benefit of less than 70% of the employee's normal weekly earnings as at the date of the increase in the superannuation amount.

132 Former employees under 65 who are not in receipt of superannuation benefits and are unable to engage in any work

(1) This section applies to a former employee who:

Authorised Version C2019C00166 registered 01/05/2019

(a) on the commencing day, was under 65 and not in receipt of a pension under a superannuation scheme; and
(b) is not capable of engaging in any work.

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

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

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

(5) Where, as a result of an increase in the amount of a former employee's normal weekly earnings, the amount of compensation payable to the former employee under subsection (2), (3) or (4) is less than 70% of those increased normal weekly earnings, that amount of compensation shall be increased, or further increased, as the case requires, until it is equal to 70% of those increased normal weekly earnings.

132A Former employees under 65 who are capable of engaging in any work

(1) This section applies to a former employee who:
(a) on the commencing day, was under 65; and
(b) is capable of engaging in any work.

(2) Where a person to whom this section applies was in receipt of a pension under a superannuation scheme on the commencing day,

Authorised Version C2019C00166 registered 01/05/2019

then, subject to this Division, the amount of compensation payable per week to the former employee is:

(a) the amount of compensation per week that would have been payable under section 131 if that section had applied to the former employee, less an amount that is the greater of the following amounts:

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

(ii) the amount per week (if any) that the employee earns from any employment (including self-employment) that is undertaken by the employee during that week; or

(b) the amount of compensation per week that would have been payable under section 20 if that section had applied to the former employee;

whichever is greater.

(3) Where a person to whom this section applies was not in receipt of a pension under a superannuation scheme on the commencing day, then, subject to this Division, the amount of compensation payable per week to the former employee is:

(a) the amount of compensation per week that would have been payable under section 132 if that section had applied to the former employee, less an amount that is the greater of the following amounts:

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

(ii) the amount per week (if any) that the employee earns from any employment (including self-employment) that is undertaken by the employee during that week; or

(b) the amount of compensation per week that would have been payable under section 19 if that section had applied to the former employee, less an amount equal to 5% of his or her normal weekly earnings;

whichever is greater.

(4) In determining, for the purposes of this section, the amount per week a former employee is able to earn in suitable employment,

Authorised Version C2019C00166 registered 01/05/2019

the MRCC must have regard to the factors mentioned in paragraphs 19(4)(a), (b), (c), (d), (e), (f) and (g) as if those paragraphs referred to the former employee.

133 Minimum benefit payable

(1) Where:

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

(b) the amount of compensation that would, but for this section, be payable to a former employee under section 132;

is less than the minimum earnings, that amount of combined benefit or compensation, as the case may be, shall be increased by an amount equal to the difference between that amount and the minimum earnings.

(2) In this section:

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

134 Reduction of compensation on reaching pension age

(1) When a former employee to whom section 131, 132 or 132A applies reaches pension age, the amount of compensation payable per week to the former employee but for this section must be reduced by an amount calculated under the formula:

$$\frac{5 \times (\text{Pension age} - \text{Age as at commencing day})}{100} \times \text{Amount of weekly compensation}$$

where:

age as at commencing day means the age of the former employee, expressed in completed years, as at the commencing day.

Authorised Version C2019C00166 registered 01/05/2019

amount of weekly compensation means that amount of compensation payable per week to the former employee.

(2) Neither section 8 nor section 13 applies to the amount of compensation payable to an employee from time to time in accordance with subsection (1).

135 Former employees 65 and over who are in receipt of superannuation benefits

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

(2) The amount of compensation payable per week to the former employee under this Act is an amount equal to the employee's 1971 amount.

136 Former employees 65 and over who are not in receipt of superannuation benefits

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

(2) The amount of compensation payable per week to the former employee under this Act is an amount equal to the employee's 1971 amount.

137 Redemption on request by former employee

(1) If:

(a) the Commonwealth is liable to make weekly payments of compensation to a former employee in respect of an injury resulting in an incapacity; and

(b) the amount of those payments if $62.99 per week or less; and

(c) the MRCC is satisfied that the degree of the former employee's incapacity is unlikely to change;

Authorised Version C2019C00166 registered 01/05/2019

the MRCC must, on written request by the former employee, make a determination that the liability of the Commonwealth to make further payments to the former employee be redeemed by the payment to the former employee of a lump sum.

(2) The amount of the lump sum is the sum of:
  (a) the amount worked out using the formula in subsection (3); and
  (b) the amount worked out using the formula in subsection (4).

(3) The formula for the purposes of paragraph (2)(a) is:

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

(4) The formula for the purposes of paragraph (2)(b) is:

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

(5) For the purposes of this section:

amount per week means the amount of compensation per week payable to the former employee.

specified number means the number specified by the Minister for the purposes of subsection 30(2).

n means the number worked out using the formula:

$$\frac{\text{Number of days}}{365}$$

where:

number of days means the number of days in the period beginning on the day after the day on which the determination is made and ending on the day immediately before the day on which the employee reaches pension age.

Authorised Version C2019C00166 registered 01/05/2019

reduced amount per week means the amount per week less the amount calculated under the formula in section 134.

l means the number worked out in using the formula:

$$\text{Expectation of life} - (65 - \text{Age})$$

expectation of life means the number of years in the complete expectation of life of the former employee at the date of the determination, as ascertained by reference to the latest Australian Life Tables published by the Australian Statistician.

age means the number of completed years in the age of the former employee at the date of the determination.

Authorised Version C2019C00166 registered 01/05/2019

Part XI—Operation of this Act in relation to certain defence-related injuries and deaths etc.

Division 1—Preliminary

140 Simplified outline of this Part

This Part confers on the Military Rehabilitation and Compensation Commission the functions:

(a) of determining and managing claims under this Act that relate to defence service that occurred before the MRCA commencement date; and

(b) of managing the provision of compensation and rehabilitation provided as a result of the making of claims of that kind.

141 Definitions

In this Part:

Defence Force has the meaning given by the MRCA.

defence-related claim means a claim under this Act made before or after the MRCA commencement date (including a claim made but not determined before that date) in respect of an injury, loss, damage or death:

(a) to which the MRCA does not apply; and

(b) that relates to defence service that occurred before the MRCA commencement date.

Authorised Version C2019C00166 registered 01/05/2019

Note 1: For injuries, diseases and deaths to which the MRCA applies, see Parts 2 and 3 of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*.

Note 2: Rehabilitation may be provided following a defence-related claim in respect of an injury.

defence service has the meaning given by the MRCA.

Authorised Version C2019C00166 registered 01/05/2019

Division 2—Management of defence-related claims

142 Functions of MRCC

(1) The functions of the MRCC include:

(a) determining defence-related claims under this Act accurately and quickly; and

(b) arranging the payment of compensation, and the provision of rehabilitation or treatment (including treatment provided under the MRCA or the *Veterans' Entitlements Act 1986*), as a result of the making of defence-related claims.

(2) In performing the function referred to in paragraph (1)(a), the MRCC:

(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.

(4) The MRCC has power to do all things necessary or convenient to be done for, or in connection with, the performance of functions conferred by subsection (1).

143 Giving copies of defence-related claims etc.

The MRCC must give a copy of a defence-related claim made by or in respect of an employee to the Chief of the Defence Force if the employee was a member of the Defence Force at the time when the relevant injury or accident occurred or the relevant disease was contracted.

144 Provisions relating to management of claims etc.

(1) For a defence-related claim made before the MRCA commencement date:

Authorised Version C2019C00166 registered 01/05/2019

(a) a determination made by Comcare that is in force immediately before that date is taken, after that date, to have been a determination made by the MRCC in relation to that claim; and

(b) any other thing done by Comcare that is in force immediately before the MRCA commencement date is taken, after that date, to have been done by the MRCC in relation to that claim.

(2) For any defence-related claim:

(a) a notice or claim given or made under Part V after the MRCA commencement date is to be given or made to the MRCC; and

(b) a notice or claim given or made under Part V to Comcare and in force immediately before the MRCA commencement date continues in force, after that date, as if it had been given or made to the MRCC.

(3) If, for a defence-related claim:

(a) any proceedings (including proceedings under Part VI) to which Comcare is a party are brought in relation to a determination made, or thing done, by Comcare before the MRCA commencement date; and

(b) those proceedings have not been concluded before that date;

those proceedings may be continued on or after that date. For the purpose of the proceedings as so continued, the MRCC replaces Comcare as a party to the proceedings.

(4) If, on or after the MRCA commencement date:

(a) a determination made or other thing done by Comcare is treated under subsection (1) as having been made or done by the MRCC; or

(b) a notice or claim given or made under Part V to Comcare is treated under subsection (2) as if it had been given or made to the MRCC; or

Authorised Version C2019C00166 registered 01/05/2019

(c) proceedings (including proceedings under Part VI) to which Comcare is a party are treated under subsection (3) as proceedings to which the MRCC is a party;

Comcare must inform the MRCC, as soon as practicable, of that determination made or other thing done, of that notice or claim, or of those proceedings.

(5) If, under subsection (3), the MRCC replaces Comcare as a party to proceedings, the court or tribunal before which the proceedings have been brought must, on application by Comcare, join Comcare as a party to the proceedings.

(6) Any proceedings (including proceedings under Part VI) that may be brought:

(a) in relation to a determination made, or taken to have been made, by the MRCC in managing such a claim; or

(b) in relation to any thing done, or taken to have been done, by the MRCC in managing such a claim;

must be brought against the MRCC.

(7) If proceedings are brought against the MRCC in accordance with subsection (6):

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

(b) the court or tribunal before which the proceedings have been brought must, on application by Comcare, join Comcare as a party to the proceedings.

(8) An application by Comcare under subsection (5) or (7):

(a) may be made by filing a notice in the registry of the court or tribunal concerned; and

(b) must be notified to the other parties to the proceeding by serving on them a copy of the notice so filed.

(9) A decision in proceedings referred to in subsection (3) or (6) is binding on the MRCC and on Comcare, whether or not Comcare is joined as a party to the proceedings.

Authorised Version C2019C00166 registered 01/05/2019

(10) For proceedings referred to in this section:

(a) in which the MRCC replaces Comcare as a party; or

(b) brought against the MRCC;

the Commonwealth is liable to pay any amounts for which the MRCC would otherwise be liable.

Authorised Version C2019C00166 registered 01/05/2019

Division 2A—Treatment of certain defence-related injuries

144A Persons entitled to treatment under other legislation not entitled to certain compensation

(1) The MRCC is not liable, under subsection 16(1) of this Act, to pay compensation in respect of the cost of medical treatment obtained in relation to an injury of an employee if the employee is:

(aa) eligible to be provided with treatment under section 7 of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or

(a) entitled to be provided with treatment under section 281 or 282 of the MRCA for any injury or disease (within the meaning of that Act); or

(ab) eligible to be provided with treatment under section 7 of the *Treatment Benefits (Special Access) Act 2019* as a result of a claim to establish eligibility having been determined under that Act; or

(b) eligible for treatment under section 53D or subsection 85(3), (4), (4A), (4B), (5), (7) or (7A) of the *Veterans' Entitlements Act 1986* for any injury or disease (within the meaning of that Act).

Note: In this Act, the definition of ***injury*** includes a disease (see section 5A of this Act).

Exceptional circumstances determination

(2) However, if the MRCC is satisfied that there are exceptional circumstances, the MRCC may determine, in writing, that on and from a specified day subsection (1) of this section does not apply in relation to an employee and an injury.

(3) The MRCC must notify the employee of the determination within 7 days of the determination being made.

(4) A determination under subsection (2) is not a legislative instrument.

Authorised Version C2019C00166 registered 01/05/2019

144B Treatment of certain defence-related injuries to be provided under the MRCA or the *Veterans' Entitlements Act 1986*

(1) This section applies in relation to an employee and an injury (the ***DRCA injury***) if:

(a) a defence-related claim for compensation is made in respect of the DRCA injury by or in respect of the employee; and

(b) the MRCC accepts liability to pay compensation for the DRCA injury; and

(c) any of the following applies:

(i) between 1 January 2012 and 9 December 2013, the MRCC is liable to pay compensation under subsection 16(1) in respect of the cost of medical treatment obtained in relation to the DRCA injury;

(ii) the MRCC accepts liability to pay compensation for the DRCA injury, as referred to in paragraph (b) of this subsection, on or after 10 December 2013;

(iii) the MRCC determines, under subsection (2), that this section applies in relation to the employee and the DRCA injury.

Note: The MRCC may also determine that subparagraph (1)(c)(i) or (ii) does not apply (see section 144C).

(2) The MRCC may determine, in writing, that this section applies in relation to an employee and an DRCA injury on and from a specified day if:

(a) the MRCC accepted liability to pay compensation for the DRCA injury on or before 9 December 2013, as referred to in paragraph (1)(b); and

(b) between 1 January 2012 and 9 December 2013, the MRCC was not liable to pay compensation under subsection 16(1) in respect of the cost of medical treatment in relation to the DRCA injury because no treatment was obtained in relation to that injury.

Authorised Version C2019C00166 registered 01/05/2019

Treatment of certain defence-related injuries to be provided under MRCA or Veterans' Entitlements Act 1986

(3) The following table has effect in relation to an employee and an DRCA injury to which this section applies.

Treatment to be provided under the MRCA or the *Veterans' Entitlements Act 1986*

Item	If this condition is met …	then …
1	The employee is not entitled or eligible to be provided with treatment under the MRCA or the *Veterans' Entitlements Act 1986* for any injury or disease (within the meaning of those Acts)	Section 280A of the MRCA applies to the employee and the DRCA injury
2	The employee is entitled to be provided with treatment under section 279 or 280 of the MRCA for another injury or disease (within the meaning of that Act), but not the DRCA injury	Section 280A of the MRCA applies to the employee and the DRCA injury
3	The employee is eligible to be provided with treatment under subsection 85(1) or (2) of the *Veterans' Entitlements Act 1986* (but not under section 279 or 280 of the MRCA) for another injury or disease (within the meaning of the *Veterans' Entitlements Act 1986*), but not the DRCA injury	Subsection 85(2A) of the *Veterans' Entitlements Act 1986* applies to the employee and the DRCA injury

Note 1: The employee is entitled to be provided with treatment under the MRCA or the *Veterans' Entitlements Act 1986* if section 280A of the MRCA or subsection 85(2A) of the *Veterans' Entitlements Act 1986* applies to the employee and the DRCA injury.

Note 2: This subsection is subject to section 144C.

Note 3: In this Act, the definition of ***injury*** includes a disease (see section 5A of this Act).

Authorised Version C2019C00166 registered 01/05/2019

(4) The employee is entitled to be provided with treatment as a result of the table in subsection (3) on and after:
  (a) if subparagraph (1)(c)(i) applies—10 December 2013; or
  (b) if subparagraph (1)(c)(ii) applies—the day the MRCC accepts liability; or
  (c) if subparagraph (1)(c)(iii) applies—the day specified in the determination.

No entitlement to compensation under this Act

(5) The employee is not entitled to compensation under subsection 16(1) in respect of the cost of medical treatment obtained in relation to the DRCA injury if, as a result of the table in subsection (3) of this section, the employee is entitled or eligible to be provided with treatment under the MRCA or the *Veterans' Entitlements Act 1986* for the injury.

Entitlement to travel expenses under this Act

(6) Subsections 16(6) to (8) of this Act apply in relation to treatment provided, as a result of the table in subsection (3) of this section, under the MRCA or the *Veterans' Entitlements Act 1986* for an injury as if that treatment was medical treatment referred to in subsections 16(6) to (8) of this Act in relation to which compensation is payable.

Determination not legislative instrument

(7) A determination under subsection (2) is not a legislative instrument.

144C Exceptional circumstances determination

(1) If the MRCC is satisfied that there are exceptional circumstances, the MRCC may determine, in writing, that on and from a specified day subparagraph 144B(1)(c)(i) or (ii) does not apply in relation to an employee and an injury.

Authorised Version C2019C00166 registered 01/05/2019

(2) The MRCC must notify the employee of the determination within 7 days of the determination being made.

Determination not legislative instrument

(3) A determination under subsection (1) is not a legislative instrument.

Authorised Version C2019C00166 registered 01/05/2019

Division 3—Administrative matters

145 Relevant authority

(1) This Act applies in relation to an employee by whom or in respect of whom a defence-related claim has been made, and in relation to dependants of the employee, as if the MRCC were the relevant authority in relation to the employee for that claim.

(2) However, for defence-related claims, this Act has effect as if references in this Act to a relevant authority, in relation to liability to pay an amount, in relation to a debt being due or in relation to the receipt of an amount, were references to the Commonwealth.

146 Rehabilitation authority etc.

(2) Section 40 of the MRCA (rules where rehabilitation authority changes) applies for the purposes of the application of this Act to the employee in relation to a defence-related claim.

(3) The duty under section 40 to take steps to provide suitable employment, or to assist in finding suitable employment, for a person who is undertaking, or has completed, a rehabilitation program must be performed by the person's rehabilitation authority rather than the Commonwealth.

147 Notice to the Chief of the Defence Force

Section 61 applies as if it requires the determining authority to give a copy of the notice to the Chief of the Defence Force if the determination relates to liability for an injury, disease or death, or the permanent impairment, of a person who was a member of the Defence Force:

(a) for an injury, disease or permanent impairment—at the time when the determination was made; or

(b) for a death—at the time of death.

Authorised Version C2019C00166 registered 01/05/2019

148 Rehabilitation programs

Despite section 37, the MRCC or the Chief of the Defence Force as the rehabilitation authority for an employee in relation to a defence-related claim may make arrangements for the provision of a rehabilitation program for the employee by:

(a) an approved program provider; or

(b) a person nominated in writing by the MRCC or the Chief of the Defence Force, being a person the MRCC or Chief of the Defence Force is satisfied has appropriate skills and expertise to design and provide rehabilitation programs.

149 Directions by Minister

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

(2) The MRCC must comply with a direction given under subsection (1).

151 MRCC may obtain information etc.

(1) The MRCC may give a written notice to any person requiring the person, for the purposes of this Act:

(a) to provide the MRCC (or a specified staff member assisting the MRCC) such information as the MRCC requires; or

(b) to produce to the MRCC (or a specified staff member assisting the MRCC) any documents in the custody or under the control of the person; or

(c) to appear before a specified staff member assisting the MRCC to answer questions.

(2) To avoid doubt, the person given the notice may be:

(a) the Secretary of the Defence Department; or

(b) the Secretary of the Department; or

Authorised Version C2019C00166 registered 01/05/2019

(c) the Chief of the Defence Force; or

(d) a person employed:

(i) in or in connection with a Department of the Commonwealth, a State or Territory; or

(ii) by any authority of the Commonwealth, a State or Territory.

(3) The notice must specify:

(a) if paragraph (1)(a) or (b) applies:

(i) the period within which the person must comply with the notice; and

(ii) the manner in which the person must comply with the notice; or

(b) if paragraph (1)(c) applies:

(i) the time at which the person must appear before the staff member; and

(ii) the place at which the person must appear before the staff member.

(4) The specified period or the specified time mentioned in subsection (3) must be at least 14 days after the notice is given.

(5) The MRCC may require the information or answers to be verified by, or given on, oath or affirmation and either orally or in writing.

(6) A staff member to whom information or answers are verified or given may administer the oath or affirmation.

(7) This section does not require a person to give information, produce a document or give evidence to the extent that, in doing so, the person would contravene a law of the Commonwealth (not being a law of a Territory).

Note: A law of a State or Territory cannot prevent a person from giving information, producing documents or giving evidence for the purposes of this Act (see section 151A).

(8) This section binds the Crown in each of its capacities, but does not make the Crown liable to be prosecuted for an offence.

Authorised Version C2019C00166 registered 01/05/2019

(9) A person commits an offence if the person fails to comply with a notice under this section.

Penalty: 10 penalty units.

(10) An offence against subsection (9) is an offence of strict liability.

(11) Subsection (9) does not apply to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (11) (see subsection 13.3(3) of the *Criminal Code*).

151AA Self-incrimination

(1) An individual is not excused from giving information or evidence, or producing a document, under section 151 on the ground that the information or evidence, or the production of the document, might tend to incriminate the individual or expose the individual to a penalty.

(2) However:

(a) the information or evidence given or the document produced; and

(b) giving the information or evidence or producing the document; and

(c) any information, document or thing obtained as a direct or indirect consequence of giving the information or evidence or producing the document;

are not admissible in evidence against the individual in any proceedings, other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act.

151A Giving information

(1AA) Nothing in a law of a State or Territory operates to prevent a person from giving information, producing documents or giving evidence for the purposes of this Act.

Authorised Version C2019C00166 registered 01/05/2019

Section 151A

(1) The MRCC (or a staff member assisting the MRCC) may provide any information obtained in the performance of duties under this Act to a person specified in the following table for the purposes specified in the table:

Giving information

	Person	Purpose
1	The Secretary of the Department administered by the Minister who administers the *National Health Act 1953*	The purposes of that Department
2	The Secretary of the Department administered by the Minister who administers the *Aged Care Act 1997*	The purposes of that Department
3	The Secretary of the Department administered by the Minister who administers the *Human Services (Centrelink) Act 1997*	The purposes of that Department
4	The Chief Executive Centrelink (within the meaning of the *Human Services (Centrelink) Act 1997*)	The purposes of Centrelink
5	The Chief Executive Medicare (within the meaning of the *Human Services (Medicare) Act 1973*)	The purposes of Medicare
6	The Commonwealth Superannuation Corporation	A purpose relating to the performance of a function, or the exercise of a power, by that Corporation under: (a) an Act administered by CSC; or (b) an instrument under an Act administered by CSC

(1A) The MRCC (or a staff member assisting the MRCC) may provide any information obtained in the performance of duties under this Act to the Secretary of the Defence Department for any purposes relating to:

Authorised Version C2019C00166 registered 01/05/2019

(a) litigation involving an injury, disease or death of an employee in relation to which a claim has been made under this Act; or

(b) monitoring, or reporting on, the performance of the Defence Force in relation to occupational health and safety; or

(c) monitoring the cost to the Commonwealth of injuries, diseases or deaths of employees, in relation to which claims have been made under this Act.

(1B) The MRCC (or a staff member assisting the MRCC) may provide any information obtained in the performance of duties under this Act to the Chief of the Defence Force for a purpose relating to the reconsideration or review under Part VI of a determination made under this Act about acceptance of liability for an injury, disease or death.

(2) The person must not:

(a) use the information obtained under subsection (1), (1A) or (1B) for a purpose other than those purposes; or

(b) further disclose the information obtained under subsection (1), (1A) or (1B) for a purpose other than those purposes.

(3) To avoid doubt, information that is used or disclosed in accordance with this section is taken, for the purposes of the *Privacy Act 1988*, to be authorised by law.

(4) In this section:

Act administered by CSC has the meaning given by the *Governance of Australian Government Superannuation Schemes Act 2011*.

Authorised Version C2019C00166 registered 01/05/2019

152 Delegation

(1) The MRCC may, by resolution, delegate any of its functions or powers under a provision of this Act to a person to whom it can, under section 384 of the MRCA, delegate functions or powers under that Act.

(2) The Chief of the Defence Force may, in writing, delegate any of his or her functions or powers under a provision of this Act to a person to whom the Chief of the Defence Force can delegate functions or powers under section 438 of the MRCA.

154 Settlements and determinations etc. under the 1912 Act, the 1930 Act or the 1971 Act

(1) Subsection (2) applies to a settlement that:
  (a) under subsection 127(1), is taken to be a determination made by the relevant authority under this Act; and
  (b) is in force immediately before the MRCA commencement date; and
  (c) concerns an injury that relates to defence service.

(2) On and after the MRCA commencement date, the settlement is taken to be a determination made by the MRCC under this Act in respect of the corresponding liability of the Commonwealth to pay compensation or make a similar payment under this Part in respect of that injury, but Part VI does not apply in relation to that settlement.

(3) Subsection (4) applies to a determination made or action taken that:
  (a) under subsection 127(2), is taken to be a determination made by the relevant authority under this Act; and
  (b) is in force immediately before the MRCA commencement date; and
  (c) concerns compensation or a payment that relates to defence service.

Authorised Version C2019C00166 registered 01/05/2019

(4) On and after the MRCA commencement date, the determination or action is taken to be a determination made or action taken by the MRCC under this Act in respect of the corresponding liability of the Commonwealth to pay compensation or make a similar payment under this Part.

(5) If a determination or action referred to in subsection (3) is, or has been, varied by a court or a tribunal, subsection (4) has effect in relation to that determination or action as so varied.

Authorised Version C2019C00166 registered 01/05/2019

Division 5—Modifications relating to Comcare and Defence Department for employees who are engaged in defence service

157 Application of certain provisions to Defence Department

(1) Sections 97, 97A, 97B, 97C and 97D of the SRC Act do not apply to the Defence Department in relation to defence service on or after the MRCA commencement date.

(2) Any payment made by the Defence Department under, or purportedly under, section 97H of the SRC Act for a determination under section 97 or 97D of that Act in respect of defence service before the MRCA commencement date is taken to have been validly made.

(3) Any payment made by the Defence Department under, or purportedly under, section 67H of the *Occupational Health and Safety Act 1991* in respect of defence service before the MRCA commencement date is taken to have been validly made.

Authorised Version C2019C00166 registered 01/05/2019

Division 6—Appropriation

160 Appropriation

(1) The Consolidated Revenue Fund is appropriated for the purposes of paying compensation and other amounts payable in relation to defence service under this Act.

(1A) The Consolidated Revenue Fund is appropriated for the purposes of making payments under the scheme referred to in section 40A.

(2) The Consolidated Revenue Fund is appropriated for the purposes of paying for:

(a) treatment provided under subsection 280A(1) of the MRCA, and other services in relation to such treatment; and

(b) MRCA supplement that is payable because a person is entitled to treatment in accordance with that subsection.

Note: That treatment is provided to an employee in relation to a defence-related claim (see section 144B of this Act).

Authorised Version C2019C00166 registered 01/05/2019

Division 7—Annual report

161 Annual report

(1) As soon as possible after each 30 June, the Chair of the MRCC must give the Minister, for presentation to the Parliament, a report of the MRCC's activities under this Act during the financial year that ended on that day.

(2) A report under subsection (1) must include particulars of any directions given by the Minister under section 149 during the financial year to which the report relates.

Authorised Version C2019C00166 registered 01/05/2019

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Authorised Version C2019C00166 registered 01/05/2019

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

Authorised Version C2019C00166 registered 01/05/2019

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Authorised Version C2019C00166 registered 01/05/2019

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988	156, 1988		12 Oct 2017 (s 2(1) item 1)	
Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Act 2017	28, 2017	4 Apr 2017	Sch 1 (items 3, 4), Sch 2 (items 3–6, 8) and Sch 3 (item 1): 12 Oct 2017 (s 2(1) items 3, 5, 8)	Sch 2 (item 8)
Veterans' Affairs Legislation Amendment (Budget Measures) Act 2017	59, 2017	22 June 2017	Sch 1 (items 17, 18) and Sch 3 (items 11–25): 12 Oct 2017 (s 2(1) items 3, 7)	Sch 3 (item 25)
Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017	108, 2017	14 Sept 2017	Sch 1: 12 Oct 2017 (s 2(1) items 2, 3)	Sch 1 (items 1, 2, 62–68)
Veterans' Affairs Legislation Amendment (Omnibus) Act 2017	128, 2017	30 Nov 2017	Sch 3 (item 6), Sch 4 (items 6, 7) and Sch 5 (items 4–6): 1 Dec 2017 (s 2(1) items 4, 6, 8)	—
Marriage Amendment (Definition and Religious Freedoms) Act 2017	129, 2017	8 Dec 2017	Sch 3 (item 38) and Sch 4: 9 Dec 2017 (s 2(1) item 7)	Sch 4

Authorised Version C2019C00166 registered 01/05/2019

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No. 1) Act 2018	17, 2018	28 Mar 2018	Sch 6 (items 2–330): 29 Mar 2018 (s 2(1) item 9)	Sch 6 (item 330)
Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No. 2) Act 2018	70, 2018	29 June 2018	Sch 1 (items 3, 4): 1 Nov 2018 (s 2(1) item 2)	—
Veterans' Affairs Legislation Amendment (Omnibus) Act 2018	135, 2018	25 Oct 2018	Sch 2: 26 Oct 2018 (s 2(1) item 1)	Sch 2 (item 3)
Treatment Benefits (Special Access) (Consequential Amendments and Transitional Provisions) Act 2019	42, 2019	5 Apr 2019	Sch 1 (items 1, 3) and Sch 2 (item 21): 6 Apr 2019 (s 2(1) item 2)	Sch 1 (items 1, 3)

Authorised Version C2019C00166 registered 01/05/2019

Endnote 4—Amendment history

Provision affected	How affected
Title	am No 108, 2017
Part I	
s 1	am No 28, 2017
s 2	rs No 17, 2018
s 3	am No 17, 2018
s 3A	ad No 28, 2017
s 4	am No 28, 2017; No 108, 2017; No 129, 2017; No 17, 2018
s 4AA	rs No 108, 2017
	am No 128, 2017
s 4A	rep No 17, 2018
s 5	rs No 108, 2017
	am No 17, 2018
s 5B	am No 17, 2018
s 6	am No 17, 2018
s 6A	am No 108, 2017
s 7	am No 108, 2017; No 17, 2018
s 8	am No 108, 2017; No 17, 2018
s 9	am No 17, 2018
s 11	am No 17, 2018
Part II	
Division 1	
s 14	am No 17, 2018
s 15	am No 108, 2017; No 17, 2018
s 15A	rep No 108, 2017
s 16	am No 17, 2018
Division 2	
s 17	am No 17, 2018
s 18	am No 17, 2018

Authorised Version C2019C00166 registered 01/05/2019

Provision affected	How affected
Division 3	
s 19	am No 17, 2018; No 70, 2018
s 20	am No 17, 2018
s 21	am No 17, 2018
s 21A	am No 17, 2018
s 22	am No 17, 2018
s 23A	am No 108, 2017
	rep No 17, 2018
Division 4	
s 24	am No 17, 2018
s 25	am No 17, 2018
s 26	am No 17, 2018
s 27	am No 17, 2018
s 28	am No 17, 2018
Division 5	
s 29	am No 17, 2018
s 29A	am No 17, 2018
Division 6	
s 30	am No 17, 2018
s 31	am No 17, 2018
s 32	am No 17, 2018
s 33	am No 17, 2018
Part III	
Division 1	rep No 108, 2017
s 34	rep No 108, 2017
Division 2	rep No 108, 2017
s 34A	rep No 108, 2017
s 34B	rep No 108, 2017
s 34C	rep No 108, 2017
s 34D	rep No 108, 2017
s 34E	rep No 108, 2017

Authorised Version C2019C00166 registered 01/05/2019

Endnote 4—Amendment history

Provision affected	How affected
s 34F	rep No 108, 2017
s 34G	rep No 108, 2017
s 34H	rep No 108, 2017
s 34J	rep No 108, 2017
s 34K	rep No 108, 2017
s 34L	rep No 108, 2017
s 34M	rep No 108, 2017
s 34N	rep No 108, 2017
s 34P	rep No 108, 2017
s 34Q	rep No 108, 2017
s 34R	rep No 108, 2017
s 34S	rep No 108, 2017
Division 3 heading	rep No 108, 2017
s 35	rep No 108, 2017
s 36	am No 59, 2017
s 37	am No 59, 2017
s 38	am No 17, 2018
s 39	am No 59, 2017
s 40	am No 59, 2017; No 17, 2018
s 40A	ad No 128, 2017
s 41	am No 17, 2018
s 41A	am No 108, 2017; No 17, 2018
s 41B	rep No 108, 2017
s 41C	rep No 108, 2017
s 41D	rep No 108, 2017
Part IV	
s 43	am No 17, 2018
s 44	am No 17, 2018
s 45	am No 17, 2018
s 46	am No 17, 2018
s 47	am No 17, 2018

Authorised Version C2019C00166 registered 01/05/2019

Provision affected	How affected
s 48	am No 17, 2018
s 49	am No 17, 2018
s 50	am No 17, 2018
s 51	am No 17, 2018
s 52A	am No 17, 2018
Part V	
s 54	am No 17, 2018
s 56	am No 17, 2018
Part VI	
s 60	am No 108, 2017; No 17, 2018
s 62	am No 108, 2017; No 17, 2018
s 64	am No 108, 2017; No 17, 2018
s 67	am No 108, 2017; No 17, 2018
Part VII	rep No 108, 2017
s 68	rep No 108, 2017
s 69	rep No 108, 2017
s 70	rep No 108, 2017
s 70A	rep No 108, 2017
s 70B	rep No 108, 2017
s 71	rep No 108, 2017
s 72	rep No 108, 2017
s 72A	rep No 108, 2017
s 73	rep No 108, 2017
s 73A	rep No 108, 2017
s 73B	rep No 108, 2017
s 74	rep No 108, 2017
s 76	rep No 108, 2017
s 79	rep No 108, 2017
s 80	rep No 108, 2017
s 81	rep No 108, 2017
s 83	rep No 108, 2017

Authorised Version C2019C00166 registered 01/05/2019

Endnote 4—Amendment history

Provision affected	How affected
s 84	rep No 108, 2017
s 85	rep No 108, 2017
s 86	rep No 108, 2017
s 87	rep No 108, 2017
s 88	rep No 108, 2017
s 89	rep No 108, 2017
s 89A	rep No 108, 2017
s 89B	rep No 108, 2017
s 89C	rep No 108, 2017
s 89D	rep No 108, 2017
s 89E	rep No 108, 2017
s 89F	rep No 108, 2017
s 89G	rep No 108, 2017
s 89H	rep No 108, 2017
s 89J	rep No 108, 2017
s 89K	rep No 108, 2017
s 89L	rep No 108, 2017
s 89M	rep No 108, 2017
s 89N	rep No 108, 2017
s 89P	rep No 108, 2017
s 89Q	rep No 108, 2017
s 89R	rep No 108, 2017
s 89S	rep No 108, 2017
s 90B	rep No 108, 2017
s 90C	rep No 108, 2017
s 90D	rep No 108, 2017
s 91	rep No 108, 2017
s 92	rep No 108, 2017
s 93	rep No 108, 2017
s 95	rep No 108, 2017
s 96	rep No 108, 2017

Authorised Version C2019C00166 registered 01/05/2019

Endnote 4—Amendment history

Provision affected	How affected
s 96A	rep No 108, 2017
s 96B	rep No 108, 2017
s 96C	rep No 108, 2017
s 97	rep No 108, 2017
s 97A	rep No 108, 2017
s 97B	rep No 108, 2017
s 97C	rep No 108, 2017
s 97CA	rep No 108, 2017
s 97CB	rep No 108, 2017
s 97CC	rep No 108, 2017
s 97D	rep No 108, 2017
s 97DA	rep No 108, 2017
s 97DB	rep No 108, 2017
s 97E	rep No 108, 2017
s 97F	rep No 108, 2017
s 97G	rep No 108, 2017
s 97H	rep No 108, 2017
s 97HA	rep No 108, 2017
s 97J	rep No 108, 2017
s 97K	rep No 108, 2017
s 97L	rep No 108, 2017
s 97LA	rep No 108, 2017
s 97M	rep No 108, 2017
s 97MA	rep No 108, 2017
s 97N	rep No 108, 2017
s 97P	rep No 108, 2017
s 97Q	rep No 108, 2017
s 97QA	rep No 108, 2017
s 97QB	rep No 108, 2017
s 97QBA	rep No 108, 2017
s 97QBB	rep No 108, 2017

Authorised Version C2019C00166 registered 01/05/2019

Endnote 4—Amendment history

Provision affected	How affected
s 97QBC	rep No 108, 2017
s 97QC	rep No 108, 2017
s 97QD	rep No 108, 2017
s 97QE	rep No 108, 2017
s 97QF	rep No 108, 2017
Part VIII	rep No 108, 2017
s 98A	rep No 108, 2017
s 99	rep No 108, 2017
s 100	rep No 108, 2017
s 101	rep No 108, 2017
s 102	rep No 108, 2017
s 103	rep No 108, 2017
s 104	rep No 108, 2017
s 104A	rep No 108, 2017
s 105	rep No 108, 2017
s 106	rep No 108, 2017
s 107	rep No 108, 2017
s 107A	rep No 108, 2017
s 108	rep No 108, 2017
s 108A	rep No 108, 2017
s 108B	rep No 108, 2017
s 108C	rep No 108, 2017
s 108D	rep No 108, 2017
s 108E	rep No 108, 2017
s 108F	rep No 108, 2017
s 108G	rep No 108, 2017
s 108H	rep No 108, 2017
Part IX	
s 110	am No 17, 2018
s 111	am No 17, 2018
s 112	am No 17, 2018

Authorised Version C2019C00166 registered 01/05/2019

Provision affected	How affected
s 112A	am No 108, 2017; No 17, 2018
s 112B	am No 108, 2017; No 17, 2018
s 113	am No 17, 2018
s 114A	am No 108, 2017; No 17, 2018
s 114B	am No 17, 2018
s 114C	am No 17, 2018
s 114D	am No 17, 2018
s 117	rep No 17, 2018
s 118	am No 17, 2018
s 119	am No 17, 2018
s 120	am No 17, 2018
s 121A	rep No 17, 2018
s 121B	ad No 108, 2017
s 122A	am No 17, 2018
Part X	
Division 2	
s 124A	rep No 17, 2018
s 125	am No 17, 2018
s 127	am No 17, 2018
s 128	am No 17, 2018
s 128A	rep No 17, 2018
s 129	am No 17, 2018
s 129A	am No 17, 2018
Division 3	
s 132A	am No 17, 2018
s 137	am No 17, 2018
Part XI	
Division 1	
s 140	am No 17, 2018
s 141	am No 108, 2017

Authorised Version C2019C00166 registered 01/05/2019

Endnote 4—Amendment history

Provision affected	How affected
Division 2	
s 142	am No 108, 2017
s 143	am No 17, 2018
Division 2A	
s 144A	am No 59, 2017; No 42, 2019
s 144B	am No 17, 2018
Division 3	
s 146	am No 17, 2018
s 147	am No 28, 2017; No 108, 2017
	rs No 17, 2018
s 148	am No 108, 2017
s 150	rep No 108, 2017
s 151	am No 28, 2017; No 108, 2017
	rs No 135, 2018
s 151AA	ad No 135, 2018
s 151A	am No 28, 2017; No 128, 2017; No 17, 2018; No 135, 2018
s 153	rep No 17, 2018
Division 4	rep No 17, 2018
s 155	rep No 17, 2018
Division 5	
s 156	rep No 108, 2017
s 157	am No 108, 2017
s 158	rep No 108, 2017
s 159	rep No 108, 2017
Division 7	
s 160	am No 128, 2017
s 161	am No 108, 2017

Authorised Version C2019C00166 registered 01/05/2019