

1992

THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

SENATE

COMMONWEALTH EMPLOYMENT (MISCELLANEOUS  
AMENDMENTS) BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Industrial Relations,  
Senator the Honourable Peter Cook)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE  
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED.





COMMONWEALTH EMPLOYMENT (MISCELLANEOUS  
AMENDMENTS) BILL 1992

OUTLINE

This Bill proposes amendments to the Commonwealth Employees' Rehabilitation and Compensation Act 1988 ("the CERC Act") and the Occupational Health and Safety (Commonwealth Employment) Act 1991 ("the OH&S Act"). It also proposes certain minor technical and consequential amendments to other legislation and necessary transitional provisions.

The amendments proposed by the Bill fall into three main classes. The first comprises amendments to the CERC Act designed to allow the licensing of authorities to carry out the functions, and exercise the powers, of Comcare under that Act.

Licences will be granted, on application by a Commonwealth Authority, by the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees ("the Commission").

Three classes of licences are proposed. A Class 1 licence will transfer to the licensed authority all or part of Comcare's obligation to compensate its employees. A Class 2 licence will transfer to the licensed authority in whole or in part, Comcare's function of determining its employees' claims under the CERC Act. A Class 3 licence will combine the features of Class 1 and 2 licences.

Licensed authorities will be subject to regulation by the Commission.

The proposed licensing provisions provide for applications for licences to be made and considered, and set out relevant criteria. They set out statutory conditions to which licences are to be subject and allow the Commission to impose additional conditions, as required. The effects of licences are spelled out. In addition, the Commission will be given the powers necessary to perform its function of regulating the activities under the CERC Act of licensed authorities. It will be able to give them both general and specific directions, including a direction to comply with a condition to which a licence is subject. It will also be able to suspend or revoke a licence for breach of a condition.

The existing administering authorities will hold licences by force of the provisions in the Bill.

The second class of amendments proposed by the Bill relates to finances under the CERC Act. Comcare will be allowed to enter into arrangements under which Comcare will provide and charge for agreed services related to the performance by Comcare of its functions under the CERC Act. Also included are detailed requirements for the handling by Comcare of premiums it receives and standing, or special, appropriations to cover claims liabilities and related administrative costs.

The amounts available under the appropriations covering outgoings in respect of claims other than those under Part X of the CERC Act are not to be unlimited. They are not to exceed the amounts of premiums collected under the Act, together with notional interest on those premiums, less amounts already appropriated and paid out to Comcare.

The third class of amendments proposed by the Bill will allow for the recovery, from Commonwealth Departments and authorities, of the costs of implementation of the OH&S Act. The Commission will be able to enter into arrangements under which it provides services related to its functions on a fee for service basis. In addition, Departments and authorities will be required to pay Contributions assessed annually. The contributions provisions set out a number of matters to which the Commission will be required to have regard in fixing contributions, provide for relevant information to be given to the Commission by Departments and authorities on request and provide for a two stage process of review of amounts of contributions by the Commission and the Minister. There will be an interest penalty on late payment.

The Bill also proposes minor drafting or technical amendments to the Industrial Relations Legislation Amendment Act 1991 and the Industrial Relations Legislation Amendment Act (No 3) 1991. Amendments to the Superannuation Act 1976 consequential upon the licensing amendments are also proposed.

## FINANCIAL IMPACT STATEMENT

The amendments proposed in the Bill are not expected to have a significant financial impact.

The costs of licensing, and of regulation of licensed authorities, under the CERC Act are to be covered from those authorities through application and annual fees.

The standing, or special, appropriations proposed to be inserted in the CERC Act will take the place of annual appropriations and are limited in their scope.

The cost recovery arrangements proposed for the OH&S Act may result in some savings in annual appropriations to the extent that costs are recovered from non-budget dependent agencies. Costs or savings in respect of budget dependent agencies are dependent upon the annual budget process and cannot be quantified.

## NOTES ON CLAUSES

### **Part 1 – Preliminary**

#### **Clause 1 – Short title**

The short title of the Bill is specified.

#### **Clause 2 – Commencement**

Part 1 of the Bill commences on the date of Royal Assent.

Divisions 1, 2 and 3 of Part 2 (the introductory provisions, provisions related to the licensing of authorities and to Comcare's financial arrangements and certain transitional provisions) and Part 6 (consequential amendments of the Superannuation Act 1976) commence on proclamation. If they are not proclaimed to commence within a period of 6 months from Royal Assent, they commence at the end of that period.

Division 4 of Part 2 (other amendments) and Part 4 (technical and drafting amendments of the Industrial Relations Legislation Amendment Act (No 3) 1991) commence on the commencement of related provisions of that Act. Part 3 (technical amendments of the Industrial Relations Legislation Amendment Act 1991) is taken to have commenced on the commencement of that Act. The reasons for these commencements are set out in notes on the relevant clauses.

Part 5 (cost recovery amendments of the Occupational Health and Safety (Commonwealth Employment) Act 1991) will commence on proclamation. If it is not proclaimed to commence within a period of 6 months from Royal Assent, it commences at the end of that period.

### **Part 2 – Amendments of the Commonwealth Employees' Rehabilitation and Compensation Act 1988 and related transitional provisions**

#### **Division 1 – Introductory**

#### **Clause 3 – Principal Act**

The CERC Act is the Principal Act in Part 2.

#### **Division 2 – Amendments relating to the licensing of authorities**

#### **Clause 4 – Interpretation**

This clause amends section 4 of the CERC Act.

Paragraph 4(a) amends the definition of "exempt authority" by omitting the reference to administering authority which will be superseded.

Paragraph 4(c) amends the definition of "Commonwealth authority" by ensuring that a corporation in which the Commonwealth has a substantial interest may be declared to be a Commonwealth authority.

Paragraph 4(e) replaces the definitions of "administering authority" and "principal officer" in subsection 4(1) of the CERC Act with new definitions of those terms. The new definition of "administering authority" is consequential upon the enactment of the licensing scheme. The new definition of "principal officer" reflects the previous definition and also deals with a situation where the affairs of a Commonwealth authority are managed by a board or other group of persons.

Paragraph 4(f) inserts in subsection 4(1) of the CERC Act new definitions of "licence", "licensed authority", "previous commission", "controlling interest" and "substantial interest". A substantial interest is an interest greater than that held by any other single shareholder.

Paragraph 4(g) is an amendment of subsection 4(10) of the CERC Act consequential upon the enactment of the proposed licensing scheme. That subsection will operate so that where a function of Comcare is being performed by a licensed authority in accordance with its licence, a relevant reference to Comcare in the CERC Act is to be read as a reference to the licensed authority. That translation is, however, subject to the Act giving rise to no contrary intention. Where it is a condition of the licence that a licensed authority may not deal with a claim for, or pay, compensation above a certain figure, and that limit is exceeded, such a contrary intention will arise, and a reference to Comcare will to that extent again be read as a reference to Comcare.

The remaining amendments in the clause are consequential in nature.

### **Clause 5 – Employees**

Section 5 of the CERC Act defines who is to be treated as an employee for the purposes of the Act. This clause amends subsection 5(9), consequential upon the enactment of the proposed licensing scheme, to insert a reference to a licensed authority.

### **Clause 6 – Approved guide**

This clause makes consequential amendments to section 28 of the CERC Act by omitting obsolete references to administering authorities and substituting references to licensed authorities.

### **Clause 7 – Approved rehabilitation program providers**

Section 34 of the CERC Act deals with the approval of persons who are to be able to provide rehabilitation program under the Act. Clause 7 amends the section so that, in the future, all rehabilitation program providers will be approved by Comcare.

### **Clause 8 – Provision of rehabilitation programs**

This clause makes an amendment to section 37 of the CERC Act consequential upon the amendments of section 34 of the Act by Clause 7.

### **Clause 9 – Interpretation**

Clause 9 amends section 60 of the CERC Act which defines certain terms used in Part VI of the Act – Reconsideration and review of determinations. The amendments propose the omission of obsolete references to an administering authority and substitute references to a licensed authority.

### **Clause 10 – Functions**

Section 69 of the CERC Act sets out the functions of Comcare. Clause 10 proposes the insertion of a new paragraph (ea) in relation to the collection of premiums under the Act. It will be a function of Comcare to collect, on behalf of the Commonwealth, premiums that are payable into the Consolidated Revenue Fund. Comcare's ability to do this will still depend upon a ministerial direction in appropriate terms under section 96G of the CERC Act.

### **Clause 11 – Comcare may charge for certain services**

This clause inserts a new section 70A into the CERC Act to permit Comcare to enter into certain arrangements. Under the arrangements, Comcare will be able to provide specified services related to its functions and the person or body to whom the services are provided will pay Comcare the amount agreed between them for the services. Examples of the services which might be provided include training relevant to the operation of the CERC Act and to Comcare's functions under the Act and copies, or additional copies, of relevant Comcare publications.

### **Clause 12 – Power to obtain information from Departments and authorities**

Section 71 of the CERC Act allows Comcare to require the provision of certain information by Departments and Commonwealth authorities and mandates compliance with such a requirement. Previously, such a requirement could not be made of an administering authority. The exception for an administering authority is obsolete and is to be deleted.

### **Clause 13 – Guidelines by Commission**

Section 73A of the CERC Act enables the Commission to issue policy guidelines to Comcare and to administering authorities. This clause omits obsolete references to administering authorities and substitutes references to licensed authorities.

**Clause 14 – Functions**

This clause makes a consequential amendment to section 89B of the CERC Act by omitting a reference to an administering authority and substituting a reference to a licensed authority.

**Clause 15 – Constitution**

This clause makes a consequential amendment to section 89E of the CERC Act.

**Clause 16 – Appointment**

This clause makes a consequential amendment to section 89F of the CERC Act.

**Clause 17 – Annual Reports**

This clause makes a consequential amendment to section 89S of the CERC Act.

**Clause 18 – Insertion of new sections**

This clause inserts proposed new sections 90A, 90B, 90C and 90D into the CERC Act.

**Proposed section 90A – How premiums collected by Comcare are to be dealt with**

Proposed subsection 90A(1) requires each premium collected by Comcare under paragraph 69(ea) of the CERC Act to be put into an appropriate bank account. An amount equal to the premium is to be paid to the Commonwealth with 7 days of its collection

Proposed subsection 90A(2) requires transactions under proposed subsection 90A(1) to be reflected in Comcare's accounts and records. Proposed subsection 90A(3) treats payment of amounts paid by Comcare to the Commonwealth as equivalent to their payment into the Consolidated Revenue Fund for the purposes of the CERC Act.

**Proposed section 90B – Payment to Comcare in respect of liabilities under Part X**

Proposed section 90B makes payable to Comcare the moneys necessary to meet its undischarged liabilities in respect of compensation claims under Part X of the CERC Act and to cover administrative costs associated with those claims.

**Proposed section 90C – Payments to Comcare in respect of other liabilities**

Proposed subsection 90C(1) makes payable to Comcare the moneys necessary to enable it to discharge its liabilities in respect of compensation claims other than under Part X of the CERC Act and to cover administrative costs associated with



those claims. The amounts available to Comcare in this regard are limited to the amounts of premiums it has collected together with notional interest on such of those premiums as have not from time to time been paid out to it less previous payments (proposed subsection 90C(2)). A formula to that effect is included in proposed subsection 90C(2) and the terms used in that formula are defined.

Proposed subsection 90C(3), for the sake of convenience, allows the Minister for Finance to determine the total amounts of premiums received and available for this purpose, at the commencement of the proposed section, the relevant amount of notional interest similarly available and amounts previously paid out to Comcare.

Proposed subsection 90C(4) defines the term premium to include a contribution paid before 1 July 1991 under the CERC Act as then in force.

### **Proposed section 90D – Appropriation**

This proposed section provides a special, or standing, appropriation of the Consolidated Revenue Fund to meet the payments provided for by sections 90B and 90C.

### **Clause 19 – Money of Comcare**

Paragraphs 19(a) and (b) make amendments consequential upon the insertion into the CERC Act of proposed sections 90A, 90B, 90C and 90D.

Paragraph 19(c) of the Bill omits paragraph 91(4)(a) of the CERC Act and substitutes a new paragraph allowing money of Comcare not immediately required for its purposes to be invested on fixed deposit with the Reserve Bank of Australia or with another bank approved by the Treasurer.

### **Clause 20 – Estimates of Premiums**

This clause repeals section 96 of the CERC Act and substitutes a new section 96 requiring the Commission to prepare estimates of premiums under the CERC Act of each Department and Commonwealth authority for each financial year. An obsolete reference to an administering authority no longer appears in the proposed section. It is intended that, unlike an administering authority, a licensed authority will be required to pay premiums under the CERC Act reflecting Comcare's ongoing involvement with the staff of the licensed authority. The extent of Comcare's involvement will vary depending upon the terms of its licence.

### **Clause 21 – Amount of Premium**

Section 96A of the CERC Act sets out the matters to which the Commission is to have regard in estimating the amounts of premiums under the Act. One of the matters to which the Commission is to have regard is the "prescribed amount". The prescribed amount is an amount worked out using the formula "estimated liability + estimated administrative costs".

This clause varies the definitions of estimated liability and estimated administrative cost to make them consistent with the operation of the licensing system. Accordingly, each definition takes account of the case of a Department and an authority that does not hold a license and the case of an authority which does hold a license. In the case of an authority that holds a license, the costs to which the definitions refer are the costs to be incurred by Comcare in relation to staff of the licensed authority.

#### **Clause 22 – Information to be given to Commission**

This clause omits from section 96C of the CERC Act, an obsolete exception in favour of an administering authority. No similar exception is to be given to licensed authorities because it will be necessary for the Commission to be able to obtain information of the kind covered by the section.

#### **Clause 23 – Variation of Estimate**

Section 96H of the CERC Act allows the Commission to alter an estimate of a premium payable by a department or Commonwealth authority in certain limited circumstances. This clause proposes the insertion of a new paragraph 96H(1)(e) which will allow variation of an estimate where a license is, or is to be, granted to the authority or a license held by the authority is, or is to be, revoked. Any of these events will have a significant impact on Comcare's obligations under the CERC Act in relation to staff of the authority concerned. They will result in a transfer of liability to pay compensation, or an obligation to determine claims either to Comcare from the authority, or from Comcare to the authority. In either case, it would be inconsistent with the nature and role of premiums under the CERC Act to leave them unaltered in such circumstances.

#### **Clause 24 – Repeal of Part VIII**

This clause repeals Part VIII of the principal act which concerns administering authorities and is, accordingly, no longer required.

#### **Clause 25 – Insertion of new Part VIIIA**

This clause proposes the insertion of a new Part VIIIA concerning licenses to authorities to accept liability for payment of, and to determine, claims.

#### **Proposed section 107A – Object**

Proposed section 107A expresses the object of the new Part as being to provide for the licensing of certain Commonwealth authorities so as to transfer to them certain liabilities to pay compensation and/or the function of determining certain claims for compensation in respect of their employees.

#### **Proposed section 107B – Interpretation**

This proposed section defines certain terms used in proposed Part VIII A. The most significant is the definition of the term "variation" which, in relation to conditions to which a licence is subject, is expressed to include the addition of a new condition and the omission of an existing condition as well as its more usual meaning of an alteration of an existing condition.

### **Proposed section 107C – Classes of licence**

This proposed section identifies the three classes of licences that may be granted to Commonwealth authorities under this proposed Part as Class 1 Licences, Class 2 Licences and Class 3 Licences. A Class 1 Licence is one for a self insurer. A Class 2 Licence is one for an authority to determine the claims of its staff. A Class 3 Licence combines the features of a Class 1 and Class 2 Licence.

### **Proposed section 107D – Application for licence**

Proposed subsection 107D(1) allows a Commonwealth authority to apply to the Commission for a licence under the proposed part.

Proposed subsection 107D(2) sets out requirements to be met in the case of each application. Applications must be in writing in an approved form, specify the class of licence applied for, be signed by the principal officer of the applicant authority, be accompanied by such documents as the Commission directs and be delivered to the Commission's office. Under proposed subsection 107D(3) an applicant authority is to pay to the Commonwealth an application fee based on the cost of considering the application. An application fee may be notified in writing by the Commission to the authority either before the application is made, and if so is to accompany the application, or afterwards, in which case it is to be paid at the earliest practicable date (proposed subsection 107D(4)).

### **Proposed section 107E – Consideration of application**

The Commission is to be required to consider each application in accordance with criteria applicable under the CERC Act and is to give written notice to the applicant authority of its decision (proposed subsection 107E(1)). Such a notice is to include a brief statement of reasons (proposed subsection 107E(2)).

### **Proposed section 107F – Criteria for grant of licences**

This proposed section sets out the criteria to be considered by the Commission in dealing with an application for a licence by a Commonwealth authority. The criteria for a Class 1 licence are, firstly, the available financial resources of the authority to discharge its obligations to pay compensation if the licence is granted, and secondly, any other relevant matters (proposed subsection 107F(2)). The criteria for a Class 2 licence are the ability of the authority to meet claims management standards, the likely attitude to the grant of the licence of the authority's employees and any other relevant matters (proposed subsection 107F(3)). An application for a Class 3 licence is to be considered against the criteria applicable to both a Class 1 licence and a Class 2 licence (proposed subsection 107F(4)).

### **Proposed section 107G - Conditions of licence**

Proposed section 107G(1) sets out the conditions to which a licence is to be subject. Those conditions require a licensed authority to comply with the requirements of the CERC Act, pay any annual licence fees applicable to it and meet such other conditions as the Commission determines.

Proposed subsection 107G(2) allows the Commission to vary the conditions it determines to which the licence is subject at any time while the licence is in force.

Proposed subsection 107G(3) gives examples of the conditions to which a licence may be made subject to the Commission. Those conditions are as follows:

- . a condition that the licence only applies in respect of claims made by a specified class of employees at the licensed authority;
- . a condition relating to the submissions able to be put in certain circumstances by the licensed authority to a Court or Tribunal in proceedings in relation to a matter arising under the CERC Act;
- . a condition that the liability to pay compensation, or the ability to determine claims, under the licence does not extend to claims exceeding a specified amount;
- . in the case of a licence conferring the self insurance function, a condition that the licensed authority will obtain specified bank or other guarantees or securities or maintain specified funds, in such form as the Commission directs, to meet its liabilities;
- . in the case of a licence conferring the function of determining claims, a condition that reconsideration of determinations by the licensed authority is to be carried out by employees of the Commonwealth or of another Commonwealth authority.

Proposed subsection 107G(4) requires the Commission, if it varies the conditions to which a licence is subject, to give to the licensed authority, and publish in the Gazette, a notice setting out the variations. It is not necessary for a licence to be textually amended to include variations.

Under proposed subsection 107G(5), a variation of a licensed condition takes effect when the notice of variation is published in the Gazette.

### **Proposed section 107H - Duration of licence**

A licence comes into force when notice of it having been granted is published in the Gazette and continues for such period as the Commission determines (proposed subsection 107H(1)). Proposed subsection 107H(2) allows the Commission to extend a licence for such period or periods as it thinks fit.

### **Proposed section 107J – Grant of licence**

Where the Commission grants a licence to a Commonwealth authority, it must publish in the Gazette a notice stating that the licence has been granted, specifying the period of the licence and setting out any conditions determined by the Commission to which the licence is subject (proposed paragraph 107J(1)(a)). The Commission must issue the licence to the licensed authority (proposed paragraph 107J(1)(b)).

A licence must be in a form determined by the Commission, specify the class of licence, specify its commencement date and the period for which it is to operate and set out any conditions determined by the Commission to which it is subject (proposed subsection 107J(2)).

### **Proposed section 107K – Effect of grant of Class 1 Licence**

Proposed subsection 107K (1) applies the remaining provisions of the proposed section where a Class 1 licence is granted.

Proposed subsection 107K(2) transfers the liability to pay compensation, or make other payments under the CERC Act in respect of loss injury or damage suffered by, or in respect of, a death of an employee of the licensed authority to whom the licence relates from Comcare to the authority.

Under proposed subsection 107K(3), if a licence is subject to a monetary limitation of the amount able to be paid by the licensed authority in relation to a claim, the authority's liability in respect of a claim does not exceed that amount and Comcare continues to have liability to pay compensation, or make other payments, under the CERC Act once that amount is exceeded.

Under proposed subsection 107K(4), the liability upon a licensed authority to make payments does not make the authority liable to have proceedings under the CERC Act brought against it. But where relevant proceedings are brought against Comcare, Comcare must inform the licensed authority of the fact so that it may, if it wishes, apply to become a party to the proceedings.

The result of any proceedings is binding on both Comcare and a licensed authority, whether or not the authority is a party to the proceedings (proposed subsection 107K(5)).

### **Proposed section 107L – Effect of grant of Class 2 Licence**

Proposed subsection 107L(1) applies the remaining provisions of the proposed section to employees of a licensed authority to whom its licence relates.

Proposed subsection 107L(2) transfers to a licensed authority the responsibility for determining claims for compensation, or for other payments, under the CERC Act in cases falling within the terms of its licence but expressly leaves, with Comcare, the obligation to make relevant payments.

Proposed subsection 107L(3) provides that where a licence is subject to a limitation of the amounts able to be the subject of a determination by the licensed authority the determination of claims so far as they concern amounts in excess of that limit remains with Comcare. If an authority makes a determination in the expectation that the amounts payable in respect of the relevant claim will be less than that limit and that expectation turns out to be incorrect, the licensed authority must, as soon as practicable, give written notice to that effect Comcare.

Proposed subsection 107L(4) applies subsections (5) to (8) of that proposed section to cases where the licensed authority is responsible for determining a claim or, if the determination was made before the licence came into effect, where the authority would have been responsible for determining the claim if the licence had been in force at the time of the determination.

Under proposed subsection 107L(5), a determination made by Comcare and in force immediately before the commencement of a licence, is to be taken, on and after the commencement of the licence, to have been made by the authority.

Proposed subsection 107L(6) makes a like provision in relation to any other thing done by Comcare before the day on which a licence comes into operation.

Proposed subsection 107L(7) requires notices or claims under Part V of the CERC Act, in respect of an injury loss or damage suffered by, or in respect of the death of, a relevant employee to be given or made to the licensed authority. Proposed subsection 107L(8) treats a notice or claim given or made to Comcare under Part V prior to the commencement of the licence as having been given or made to the licensed authority.

The remaining provisions of the proposed section deal with proceedings in relation to determinations. Proceedings taken but not completed before the commencement of the licence may be continued after that commencement but where they are continued, the licensed authority replaces Comcare as a party but Comcare is entitled to become an additional party to the proceedings (proposed subsection 107L(9)).

Under proposed subsection 107L(10), proceedings in relation to a determination by a licensed authority are to be brought against the licensed authority but, where they are so brought, the authority must inform Comcare of them as soon as practicable and Comcare is entitled to become a party to them.

Proposed subsection 107L(11) allows Comcare to become a party to certain proceedings by filing a notice in the Registry of the Court or Tribunal concerned stating that it wishes to become a party. A copy of the notice is to be served on the licensed authority and on each other party to the proceedings (proposed subsection 107L(12)).

By proposed subsection 107L(13), a decision in any proceedings referred to in subsections (9) or (10) is binding on both the licensed authority and Comcare whether or not Comcare has become a party to them.

### **Proposed section 107M – Effect of grant of Class 3 Licence**

Proposed subsection 107M(1) applies the remaining provisions of the proposed subsection to the employees of the licensed authority to whom the licence relates. The effects of the grant of a Class 3 licence are a combination of the effects of both a Class 1 and a Class 2 licence.

Proposed subsection 107M(2) transfers to a licensed authority from Comcare the liability to pay compensation and to make other payments in accordance with the licence.

Under proposed subsection 107M(3), if the licence is subject to a condition that the licensed authorities' liability to pay compensation or to make other payments is not to exceed a specified amount, the authority's liability in respect of a claim does not exceed that amount and Comcare continues to be liable to pay compensation and make other payments to the extent that they exceed that amount.

Subsection 107M(4) casts upon a licensed authority the responsibility for determining claims for compensation or for other payments under the Act falling within the terms of the licence. Under proposed subsection 107M(5), if the licence is subject to a condition that the responsibility of a licensed authority to determine claims does not extend to making a determination that would involve a payment of an amount or amounts exceeding a specified amount, the authority's responsibility for determining claims is limited accordingly. If the authority makes a determination in the expectation that the amount or amounts to be paid under the determination will not exceed that amount and the expectation is incorrect, the authority must give written notice to Comcare as soon as practicable.

Proposed subsection 107M(6) applies subsections (7) to (10) to cases where the licensed authority has the responsibility for determining the claim in question or, if the determination was made before the licence commenced, the licensed authority would have had responsibility for determining the claim if the licence had been in force at that time.

Under proposed subsection 107M(7), a determination by Comcare in force before the commencement of a licence is taken after the commencement of the licence to have been made by the licensed authority. Proposed subsection 107M(8) makes a like provision in relation to any other thing done by Comcare.

Proposed subsection 107M(9) requires notices or claims under Part V of the CERC Act, given or made after the commencement of a licence to be given or made to the licensed authority.

Proposed subsection 107M(10) requires notices or claims given or made to Comcare under Part V in force immediately before the commencement of a licence to be treated after that commencement as if they had been given or made to the licensed authority.

The remaining provisions of proposed section 107M concern proceedings before Courts or Tribunals. Under proposed subsection 107M(11), proceedings to which Comcare was a party, pending but not completed on the commencement of a licence, may be continued after that commencement and if they are so continued, the licensed authority replaces Comcare as a party but Comcare is entitled itself to become a party to the proceedings.

Proposed subsection 107M(12) requires fresh proceedings to be brought against the licensed authority but, where they are so brought, the authority must tell Comcare as soon as practicable about the proceedings and, if it appears to Comcare that it may have a relevant liability, it also is entitled to become a party to the proceedings.

Comcare becomes a party to the proceedings by filing a notice of its wish to do so in the Registry of the Court or Tribunal concerned (proposed subsection 107M(13)). A copy of that notice must be served on the licensed authority and on each other party to the proceedings (proposed subsection 107M(14)).

Proposed subsection 107M(15) provides that a decision in proceedings referred to in the section is binding on both the licensed authority and on Comcare, whether or not Comcare is a party to the proceedings.

#### **Proposed section 107N – Functions of licensed authority**

Proposed subsection 107N(1) gives the holder of a Class 1 Licence the function of making payments accurately and quickly in accordance with determinations made by Comcare in the discharge of the licensed authorities' liability and of complying to any conditions to which its licence is subject.

Proposed subsection 107N(2) casts upon a licensed authority holding a Class 2 Licence the functions of making determinations accurately and quickly to claims that it may determine, maintaining the contact with the Commission and with Comcare necessary to avoid inconsistency in administrative practice and procedures and of complying to any conditions to which its licence is subject.

Proposed subsection 107N(3) casts upon a licensed authority holding a Class 3 Licence the functions of both a Class 1 and a Class 2 Licence holder.

#### **Proposed section 107P – Powers**

A licensed authority is given the power to do anything relevant to the performance of its functions.

#### **Proposed section 107Q – Manner in which claims are to be determined**

A licensed authority is required to determine claims for compensation in the same manner as Comcare. Licensed authorities are to be guided by equity, good conscience and the substantial merits of the case, without regard to technicalities,



are not required to hold a formal hearing and are not bound by the rules of evidence.

### **Proposed section 107R – Licence fees**

Proposed section 107R sets out the annual fees payable while a licence is in force.

Proposed subsection 107R(2) provides that the amount of the fee is the amount that the Commission estimates to represent the costs incurred by the Commission in monitoring the licensed authority's performance plus a proportion of the costs incurred by Comcare in providing assistance to the Commission under section 72A of the CERC Act that are reasonably attributable to the authority.

By subclause 107R(4), fees are a debt due to the Commonwealth and payable to Comcare.

### **Proposed section 107S – Directions by Commission**

Proposed section 107S will allow the Commission to issue directions to principal officers of licensed authorities concerning the performance of its functions or the exercise of its powers. Such a direction may be general in nature, or may relate to a particular matter or class of matters (proposed subsection 107S(1)).

Proposed subsection 107S(2) will provide that, without limiting the generality of the Commission's power to issue directions to a licensed authority, the Commission can direct a licensed authority which has failed to comply with a condition of its licence to comply with the condition.

By subsection 107S(3), a licensed authority is required to comply with any directions given to it by the Commission.

### **Proposed section 107T – Delegation by licensed authority**

Proposed section 107T allows the principal officer of a licensed authority to delegate all or any of its powers under the CERC Act to a person employed by that authority, the Commonwealth or any other Commonwealth authority.

### **Proposed section 107U – Information relating to operations of licensed authority**

Under paragraph 89S(2)(c) of the CERC Act, the Commission is required to include particulars of the operations of each licensed authority in its annual report. Proposed subsection 107U(1) requires the principal officer of a licensed authority to give the Commission information relating to its operations under the CERC Act on request by the Commission.

A licensed authority will also be required, by proposed subsection 107U(2), to include details of its operations under the CERC Act in its own annual report.

**Proposed section 107V – Suspension or revocation of licence for breach of condition**

Proposed section 107V allows the Commission to investigate an apparent breach of a condition of a licence by a licensed authority. Under proposed subsection 107V(1), the Commission may advise the authority in writing of the matters which the Commission believes constitute the apparent breach of the condition and invite submissions on the matter within 30 days.

If the Commission is satisfied that a breach has occurred, the Commission may suspend the licence for a specified period if the licence was a Class 2 or Class 3 licence, or revoke the licence (subsection 107V(2)).

By proposed subsection 107V(3), the Commission must, after deciding to suspend a licence, advise the authority in writing of its reasons for that decision and set out the period of the suspension. The Commission must also publish a notice in the Gazette to the effect that the licence has been suspended for that period.

If the Commission decides to revoke a licence, subsection 107V(4) requires it to advise the authority of that decision, the reasons for the decision and the date of effect of the revocation. A notice specifying the date of effect of the revocation would also be published in the Gazette.

**Proposed section 107W – Revocation of licence at request of licensed authority**

Proposed section 107W allows the Commission to revoke a licence at the request of a licensed authority. Proposed subsection 107W(2) requires the Commission to advise the authority of its decision and its date of effect. The Commission must publish in the Gazette notice of its decision and the date of effect of the revocation.

**Proposed section 107X – Date of effect of suspension or revocation**

By proposed section 107X, the date of effect of a suspension or revocation of a licence is the date that the Commission determines, provided that it is not earlier than the date of publication of the decision in the Gazette.

**Proposed section 107Y – Effect of suspension**

The effects of suspending a Class 2 or Class 3 Licence are set out in proposed section 107Y.

By proposed subsection 107Y(2), Comcare will act as the agent of the authority concerned for the period of the suspension. Accordingly, Comcare will receive notices and claims for compensation which would otherwise have been received by the authority, determine those claims, conduct proceedings and perform any other functions that the authority would have performed, on behalf of the authority. The

authority will not be able to perform any of those functions except as an agent of Comcare.

The liability of a licensed authority whose Class 3 Licence has been suspended is not to be affected by the suspension of the licence unless Comcare decides, with the consent of the Commission and subject to any directions that the Commission decides to impose, to discharge that liability (proposed subsection 107Y(3)).

By proposed subsection 107Y(4), the authority is required to pay Comcare the amount that Comcare determines to be the cost of performing functions as the agent of the authority and reimburse Comcare for the amount of any payment it makes in discharge of the authority's liability to pay compensation.

### **Proposed section 107Z – Effect of revocation of Class 1 Licence**

Proposed section 107Z sets out the effect of revocation of a Class 1 Licence.

The authority concerned is not liable to pay compensation to any of its employees who are injured after the date of revocation (proposed subsection 107Z(2)).

The authority's liability to pay compensation to employees injured before the date of revocation is not affected (proposed subsection 107Z(3)), unless Comcare decides, with the consent of the Commission and subject to any directions that the Commission may give, to discharge that liability (proposed subsection 107Z(4)). If the authority's liability is to be discharged by Comcare, the authority's premium may be varied under section 96H of the CERC Act to take account of that fact.

By proposed subsection 107Z(5), the authority ceases to be a party to any legal proceedings in which was involved (including proceedings in the Administrative Appeals Tribunal) in respect of matters arising under the CERC Act. The proceedings may be continued, but Comcare will replace the authority in those proceedings.

### **Proposed section 107ZA – Effect of revocation of Class 2 Licence**

Proposed section 107ZA details the consequences of a Class 2 Licence being revoked.

The authority concerned ceases to have any responsibility for determining claims for compensation (proposed subsection 107ZA(2)), and any determinations it had made or actions it had taken before the date of revocation are taken to have been made or taken by Comcare (proposed subsections 107ZA(3) and (4)).

Notices and claims given to the authority before the revocation would continue to have effect after the revocation as if they had been given to Comcare (proposed subsection 107ZA(5)).

If the authority was a party to proceedings (including proceedings before the Administrative Appeals Tribunal) before the date of revocation and those

proceedings had not been finalised, the authority ceases to be a party and its place would be taken by Comcare (proposed subsection 107ZA(6)).

### **Proposed section 107ZB – Effect of revocation of Class 3 Licence**

Proposed section 107ZB sets out the consequences of revocation of a Class 3 Licence.

The authority concerned ceases to be liable to pay compensation to employees injured after the date of revocation (proposed subsection 107ZB(2)). Its liability to pay compensation to employees injured before that date is unaffected by the revocation unless Comcare decides, with the consent of the Commission and subject to any directions the Commission may decide to issue, to discharge that liability. Any liability that Comcare decides to discharge may be used as the basis for varying the premium that the authority is required to pay under section 96H of the CERC Act (proposed subsections 107ZB(3) and (4)).

Under proposed subsection 107ZB(5), the authority ceases to have responsibility for determining claims for compensation by its employees, regardless of the date of injury.

Proposed subsections 107ZB(6) and (7) preserve the effect of any determinations made by the authority or any other thing done by the authority before its licence was revoked by deeming those determinations or actions to have been made or done by Comcare.

The effect of notices and claims given to the authority before the date of revocation are preserved by proposed subsection 107ZB(8). Such notices or claims are taken to have been given to Comcare.

By proposed subsection 107ZB(9), the authority will cease to be a party to any proceedings relating to matters arising under the Act (including proceedings before the Administrative Appeals Tribunal) which had not been finalised. Those proceedings may be continued and, if they are, Comcare automatically becomes a party to them.

### **Proposed section 107ZC – Records**

Proposed section 107ZC requires the Commission to keep records of all applications for licences, decisions to refuse or grant applications, conditions attached to licences, provisions included in licences under proposed subsections 107K(3), 107L(3) or 107M(3), and the expiration, suspension and revocation of licences. By paragraph 107ZC(6), these details must be provided by the Commission in its annual report.

### **Division 3 – Transitional provisions relating to the licensing of authorities**

Division 3 of the Bill treats the present administering authorities, the Australian and Overseas Telecommunications Corporation Ltd (AOTC Ltd) and the Australian Postal Corporation (Australia Post), as having been granted Class 3 Licences on the commencement of new Part VIIIA of the Act. It set's out certain arrangements to govern their transition to licensed authorities. Licences deemed to have been granted under this Division will be taken to have been granted for twelve months.

#### **Clause 26 – Interpretation**

Clause 26 defines the terms "administering authority" and "notional licence" for the purposes of Division 3 of the Bill.

"Administering authority" will have the same meaning as in section 4 of the CERC Act as amended by Division 2 of this Bill.

"Notional licence" means a licence deemed to have been granted to AOTC Ltd or Australia Post under Clause 28.

#### **Clause 27 – Application of Division**

Clause 27 provides that Division 3 has effect despite the repeal of Part VIII of the CERC Act (which allows the Minister to declare a Commonwealth authority to be an administering authority) and despite anything in proposed Part VIIIA of the CERC Act which would be inserted by this Bill.

#### **Clause 28 – Administering authorities to have Class 3 Licences**

Subclause 28(1) deem's AOTC Ltd and Australia Post to have been granted Class 3 Licences by the Commission from the date of commencement of this Division. These notional licences are taken to have been granted under new Part VIIIA of the Act, and are subject to such conditions as the Commission determines.

By subclause 28(2), new Part VIIIA of the Act would apply to notional licences in the same way as licences granted under that Part. Conditions determined by the Commission to apply to notional licences are taken to have been determined under proposed section 107G of the CERC Act.

Subclause 28(4) will provide for notional licences to continue in force for 1 year after the date of commencement of Division 3.

#### **Clause 29 – Previous liability**

Under clause 29 any pre-existing undischarged liability of an administering authority under the CERC Act continues after the commencement of Division 3.

**Clause 30 – Previous determinations**

This clause preserves the effect of any determinations made by AOTC Ltd or Australia Post as administering authorities under the CERC Act by deeming them to have been made by them as Class 3 Licence holders.

**Clause 31 – Previous notices and claims**

Clause 31 provides that notices and claims given to either administering authority before the commencement of this Division continue to have effect and must be treated as having been given to the authority in its capacity as a Class 3 Licence holder.

**Clause 32 – Previous acts, payments etc**

Subclauses 32(1) and (2) provide that acts done or payments made by an administering authority are to be treated as having been done or paid by the licensed authority after the commencement of Division 3. This will ensure that liabilities that have been discharged by an administering authority before the commencement are not resurrected after it.

Under subclause 32(3), redemptions of liabilities made by an administering authority (under section 30 or 137 of the CERC Act) have effect after the commencement of Division 3 as redemptions of the licensed authority's liabilities.

**Clause 33 – Pending proceedings**

By clause 33, a licensed authority will continue to be a party to proceedings to which an administering authority was a party if they had not been finalised before the commencement of Division 3. Clause 33 will apply to all proceedings arising under the Act, including proceedings before the Administrative Appeals Tribunal.

**Division 4 – Other amendments**

This Division makes certain amendments to the CERC Act which are necessary to correct minor errors and omissions in the drafting of previous Acts which amended the CERC Act.

**Clause 34 – Compensation for injuries resulting in incapacity**

Clause 34 amends section 19 of the CERC Act which sets out rules for the calculation of weekly benefits payable to incapacitated employees. As a result of amendments made to the CERC Act by the Industrial Relations Legislation Amendment Act (No 3) of 1991, the liability to pay compensation to incapacitated employees was transferred from the former Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees to Comcare. This clause corrects an oversight in the drafting of that Act by substituting the word "Comcare's" for the words "the Commission's" in paragraph 19(4)(f) of the CERC Act.

**Clause 35 – Cancelled determinations not to affect certain payments of compensation**

Clause 35 corrects an error similar to the one corrected by Clause 34 by substituting the word "Comcare" for the words "the Commission" in section 32 of the CERC Act.

**Clause 36 – Confirmation of estimates**

This clause amends subsection 96FA(3) of the CERC Act. The amendment is necessary to correct an error in subsection 96FA(3), which refers to paragraph 96D(4)(b), rather than subsection 96F(1).

**Clause 37 – Comcare's liability to be discharged by prescribed Commonwealth authorities in some cases**

This clause amends section 128A of the CERC Act by omitting from subsection 128A(1) the words "the Commission's" and substituting "Comcare's". The amendment is necessary to overcome an error in the drafting of the Industrial Relations Legislation Amendment Act (No. 3) 1991.

**Part 3 – Amendments of the Industrial Relations Legislation Amendment Act 1991**

**Clause 38 – Principal Act**

This clause defines the term "Principal Act" in the Part to mean the Industrial Relations Legislation Amendment Act 1991 (the IRLA Act). The Part commences on the date of commencement of the IRLA Act so that the amendments it makes can operate with full effect. Those amendments do not adversely affect the position of any person but are of a minor technical drafting nature.

**Clause 39 – Cost of proceedings before Administrative Appeals Tribunal**

This clause makes a technical amendment to section 8 of the IRLA Act to avoid ambiguity in the operation of the amendment made by the section.

**Clause 40 – Disallowable instruments**

This clause corrects a drafting or printing error in section 14 of the IRLA Act.

**Part 4 – Amendments of the Industrial Relations Legislation Amendment Act (No.3) 1991**

**Clause 41 – Principal Act**

This clause defines the term "Principal Act" in the Part to mean the Industrial Relations Legislation Amendment Act (No.3) 1991 (the No.3 Act). This Part commences on the date of commencement of the No.3 Act so that the amendments it makes can give effect to the policy of that Act. These amendments correct drafting errors and help establish the intended relationship between the Commission and Comcare under the CERC Act. They do not adversely affect the position of any person.

**Clause 42 – Schedule 1**

This clause omits from Schedule 1 to the No.3 Act an incorrect reference.

**Clause 43 – Schedule 2**

This clause makes amendments to the No.3 Act that are of a minor technical nature or designed to omit incorrect references to Comcare where references to the Commission should have been retained.

**Part 5 – Amendments to the Occupational Health and Safety (Commonwealth Employment) Act 1991**

**Clause 44 – Principal Act**

This clause defines the term "Principal Act" in this Part to mean the OH&S Act.

**Clause 45 – Interpretation**

This clause amends section 5 of the OH&S Act. It inserts in subsection 5(1) a definition of the term "principal officer". The definition is the same as that in the CERC Act, following the amendment to the definition of that term to be made by clause 4 of this Bill. It also amends the definition of "Commonwealth authority" by inserting a new paragraph (c). The proposed paragraph will enable a body corporate in which the Commonwealth has a substantial interest to be declared to be a Commonwealth authority covered by the Act. Substantial interest will be given the same meaning as in the CERC Act.

**Clause 46 – Insertion of new Part 4A – Recovery of cost of administering Act**

This clause would insert a new Part 4A into the OH&S Act. The purpose of the new Part is to provide for the recovery by the Commission of the costs incurred by it in administering the OH&S Act. The Commission would be able to enter into fee for service arrangements and collect contributions from Departments and Commonwealth authorities to which the OH&S Act applies.



## Division 1 – Charges for services

### **Proposed section 67A – Power of Commission to enter into arrangements**

Proposed section 67A will allow the Commission to enter into arrangements with Secretaries and principal officers under which the Commission would provide services related to its functions under the Act in return for a fee agreed between them. By proposed subsection 67A(2), an amount payable under such an arrangement will be a debt due to the Commonwealth. The fee will be payable to Comcare and remitted by it to the Consolidated Revenue Fund.

## Division 2 – Contributions

### **Proposed section 67B – Estimates of contributions**

Proposed subsection 67B(1) requires the Commission to prepare estimates of the amount of contribution to be paid to each Department and authority under the OH&S Act for each financial year. The estimates for the first financial year may include an amount in respect of the administration of the Act before the beginning of that year (proposed subsection 67B(2)).

Estimates of contribution are to be prepared in such form as the Commission considers appropriate or, if the Minister has given a direction as to the form that estimates are to take, in accordance with that direction (proposed subsection 67B(3)).

By proposed subsection 67B(4), the first estimate that the Commission will be required to prepare will be in respect of the financial year starting on 1 July 1992 or, if new Part 5 of the OH&S Act commences after that date, in respect of the remainder of the 1992–93 financial year.

Estimates are to be prepared in respect of each subsequent financial year (proposed subsection 67B(5)).

### **Proposed section 67C – Amount of contribution**

Proposed section 67C sets out the matters to which the Commission will be required to have regard in calculating the amount of contribution of a Department or authority.

They are:

- the estimates provided to the Commission under section 96C of the Commonwealth Employees Rehabilitation and Compensation Act 1988 of the amount of salaries, wages or pay payable in the financial year to which the contribution relates by the Department or authority to its employees;

- . the costs likely to be incurred by the Commission in performing its functions and exercising its powers, and by Comcare acting on its behalf, under the OH&S Act;
- . the amount of premium (if any) paid by the Department or authority under the CERC Act;
- . the past and estimated future incidence and cost of employment related injuries and diseases suffered by employees of the Department or authority; and
- . the amount appropriated by the Parliament to the Commission for the purposes of enabling it to perform its functions under the OH&S Act.

#### **Proposed section 67D – Information to be given to Commission**

Under proposed section 67D, a Secretary or principal officer will be required to give the Commission the information it needs to prepare estimates under proposed section 67C within such period as is specified by the Commission. That period must be at least 21 days.

#### **Proposed section 67E – Review by Commission**

Proposed section 67E establishes a mechanism for review by the Commission of the estimates it prepares under proposed section 67C.

By proposed subsection 67E(1), the Commission is required to provide the Secretary of the Department or principal officer of the Commonwealth authority with a copy of the estimate relating to his or her Department or authority.

If the Secretary or principal officer objects to the estimate, he or she may ask the Commission to review that estimate. That request must be made within 14 days of being advised of the estimate and set out the grounds of the objection (proposed subsections 67E(2) and (3)).

By proposed subsections 67E(4) and (5), the Commission must review the estimate, confirm it or vary it in such manner as it considers appropriate, and advise the Secretary or principal officer of the outcome of the review.

#### **Proposed 67F – Review by Minister**

Proposed section 67F establishes a further mechanism for the review of estimates of contribution.

If an estimate has been reviewed by the Commission and the Secretary or principal officer objects to the outcome of the review, the Secretary or principal officer may request the Minister to review the estimate. That request must be made within 14 days of the Secretary or principal officer being advised of the results of the review

carried out under proposed section 67E, and must set out the grounds of objection (proposed subsections 67F(1) and (2)).

By proposed subsections 67F(3) and (4), the Minister must review the estimate and confirm or vary it as the Minister thinks fit.

### **Proposed section 67G – Confirmation of estimates**

By proposed subsection 67G(1), an estimate which the Commission is not requested to review is automatically confirmed on the expiration of the 14 day period referred to in proposed subsection 67E(2) within which a Secretary or principal officer may request a review.

An estimate which the Commission has confirmed, or varied and confirmed, following a review under proposed section 67E is not to be treated as having been confirmed if the Minister is subsequently asked to review the estimate under proposed section 67F. However, if the Minister is not requested to review the estimate, the estimate would automatically be confirmed on the expiration of the 14 day period within which the Minister may be requested to review the estimate (proposed subsections 67G(2) and (3)).

By proposed subsection 67G(4), an estimate confirmed by the Minister takes effect on the date of confirmation.

### **Proposed section 67H – Payment of contribution**

Proposed section 67H requires the Commission to advise the Secretary or principal officer of the confirmation of the estimate of the Department or authority.

That confirmed estimate is the contribution of the Department or authority and must be paid within such period as the Commission specifies.

### **Proposed section 67J – Penalty for late payment**

Proposed section 67J provides for the imposition of a financial penalty on a Department or authority which fails to pay its contribution on time. The penalty is one and a half per cent per month of the amount unpaid (or such higher rate as is prescribed).

### **Proposed section 67K – Recovery of contribution and penalty**

Proposed section 67K would provide that an amount of contribution or penalty is a debt due to the Commonwealth. Those amounts would be payable to Comcare for remittance to the Consolidated Revenue Fund.

**Part 6 – Amendments of the Superannuation Act 1976**

**Clause 47 – Principal Act**

This clause describes the Superannuation Act 1976 as the Principal Act in this Part of the Bill.

**Clause 48 – Interpretation**

This clause amends section 54D of the principal Act to reflect the proposed licensing of Commonwealth authorities under the CERC Act. The term "licensed administering authority" is to be defined and used in this section. Such an authority is a holder of a Class 2 or Class 3 Licence under the CERC Act.

**Clause 49 – Board to seek recommendations**

Section 54G of the Principal Act is amended by omitting obsolete references to administering authorities and substituting references to licensed administering authorities.

**Clause 50 – Board to decide whether to approve retirement**

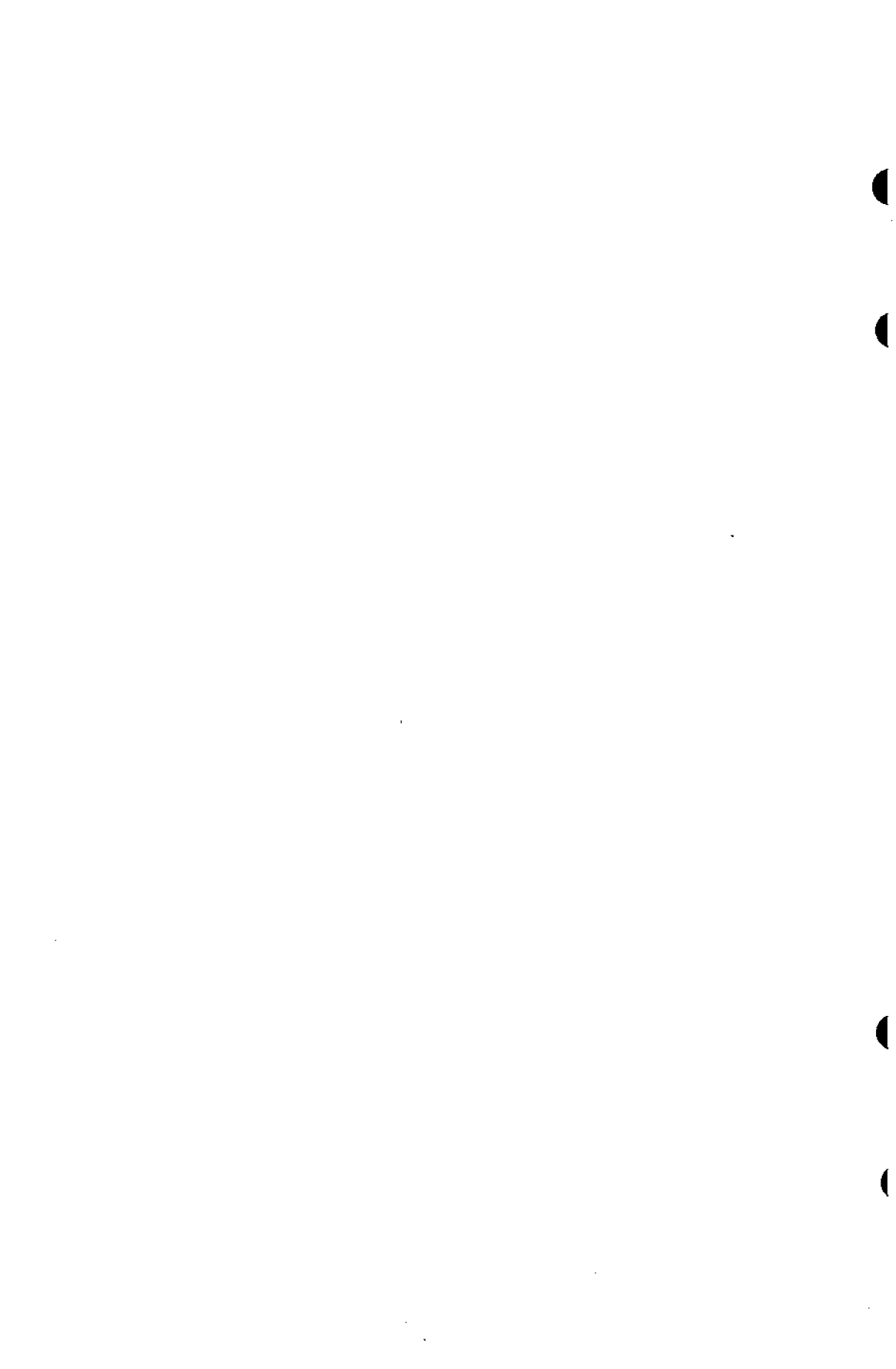
This clause amends section 54H of the Principal Act by omitting a reference to an administering authority and substituting a reference to a licensed administering authority.

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