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THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMONWEALTH EMPLOYEES' REHABILITATION AND  
COMPENSATION AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

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





# COMMONWEALTH EMPLOYEES' REHABILITATION AND COMPENSATION AMENDMENT BILL 1992

## OUTLINE

The Bill proposes amendments to the Commonwealth Employees' Rehabilitation and Compensation Act 1988 (the Act) which will be renamed the Safety, Rehabilitation and Compensation Act 1988.

The main amendments proposed will allow the option of coverage for workers' compensation under the Act to be made available to certain corporations. The amendments would result in access to a nationally based workers' compensation scheme for corporations covered.

The corporations potentially able to be covered are:

- a privatised former Government business enterprise (GBE); and
- a private sector corporation operating in the same industry as a GBE or a privatised former GBE;

which is a foreign, trading or financial corporation, or a corporation incorporated in a Territory.

It is proposed that such a corporation will be able to be identified by Ministerial declaration as one to which the Act may apply. Once this has been done, the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees (to be renamed the Safety, Rehabilitation and Compensation Commission) will be able to grant the corporation a licence under the Act, on the corporation's application. The licensing scheme proposed is closely modelled on that applying to Commonwealth authorities under the Act.

Two classes of licence are proposed:

- Class A Licences, under which the corporation will self insure its liabilities under the Act, but claims management functions will be performed by a Comcare subsidiary on a cost recovery basis; and
- Class B Licences, under which the licensed corporation will be responsible for both self insurance and claims management functions.

In the case of a Class B Licence, the licensed corporation will also be able, subject to the concurrence of the Commission, to contract out its claims management function to a private sector person or body, or to a Comcare subsidiary.

The amendments proposed set out statutory conditions to which licenses are to be subject and allow the Commission to impose additional conditions, as required.

The effects of licences are spelled out. In particular, once a licence has been granted, the Act will apply to any injury (including a disease) to an employee as defined, occurring during the currency of the licence. The Act will not apply to an injury occurring in the course of intra-State banking and intra-State insurance. State law will continue to apply to an injury or diseases occurring before the grant of the licence or after it has ceased to operate. It will also continue to apply to an injury occurring in intra-State banking and intra-State insurance. The Commission is to be given the powers necessary to perform the function of regulating the activities, under the Act, of licensed corporations. It will be able to give directions to such a corporation. It will also be able to revoke a licence for breach of a condition to which the licence is subject.

Certain minor amendments are also proposed to be made to the Act. These include:

- . making provisions for compensation for journeys of reasonable length to obtain medical treatment;
- . increasing the compensation available in respect of funeral expenses; and
- . technical improvements to the formulae for redemption of compensation payments.

### **FINANCIAL IMPACT STATEMENT**

The amendments proposed in the Bill are not expected to have significant financial impact. In particular, the extension of the Act to licensed corporations is expected to be revenue neutral.

The minor amendments proposed are expected to result in some small additional costs and savings.

## NOTES ON CLAUSES

### **Clause 1 – Short title etc**

The short title of the Bill is specified by sub-clause 1(1). Sub-clause 1(2) defines "Principal Act" to mean the Commonwealth Employees' Rehabilitation and Compensation Act 1988.

### **Clause 2 – Commencement**

The Bill commences on the date of Royal Assent.

### **Clause 3 – Amendment of title**

The long title of the Act is amended to reflect its extension to licensed corporations.

### **Clause 4 – Short Title**

The short title of the Act is amended to the "Safety Rehabilitation and Compensation Act 1988".

### **Clause 5 – Interpretation**

This clause amends section 4 of the Act. The bulk of the amendments proposed are consequential on the extension of cover under the Act to the employees of licensed corporations.

Paragraph 5(b) amends the definition of "rehabilitation authority" to include, in relation to an employee of a licensed corporation, a reference to the principal officer of that corporation. Paragraph 5(c) amends the definition of "relevant authority" by providing for relevant authorities in the case of the employees of licensed corporations. If a licensed corporation holding a Class A licence has contracted with a Comcare subsidiary for the performance of claims management functions, then that subsidiary is to be the relevant authority. If a licensed corporation holds a Class B Licence, the corporation is to be the authority. This reflects the fact that a person, including a Comcare subsidiary, contracting with the holder of a Class B Licence to provide claims management functions, performs those functions as an agent of the licensee. Paragraph 5(f) omits and substitutes the definitions of "Commission" and "licence". Under the new definitions the "Commission" is to mean the Safety, Rehabilitation and Compensation Commission. The new definition of "licence" reflects the licences available under both Part VIIIA or VIIIB. Paragraph 5(g) inserts new definitions of "Comcare subsidiary", "corporation", "eligible corporation", "excluded injury", "licensed corporation" and "principal officer". A Comcare subsidiary is defined to mean an incorporated company formed by Comcare. Such subsidiaries are to be wholly owned by Comcare.

A "corporation" is defined, for the purposes of Part VIII B, as meaning a corporation within the constitutional competence of the Parliament under paragraph 51(xx) of the Constitution (that is, a foreign, trading or financial corporation) and a body corporate incorporated in a Territory. A Commonwealth authority cannot be a corporation for this purpose.

An "excluded injury" is one occurring in the course of intra-State banking and intra-State insurance. This is an essential element in ensuring that State law continues to apply, and the Act does not apply, to such an injury.

Paragraph 5(h) inserts a new subsection 4(10A) into the Act. The proposed subsection ensures that certain provisions of the Act in which references to Comcare appear apply to a licensed corporation as though the references to Comcare were references to that corporation.

### **Clause 6 – Employees**

Section 5 of the Act defines who is to be treated as an employee for the purposes of the Act. This clause amends section 5 of the Act to insert references to licensed corporations to ensure the operation of the clause in relation to the employees of such corporations. A new subsection 5(1A) is proposed to be inserted under which a person is taken to be employed by a licensed corporation if the person performs work for that corporation and under the relevant State or Territory law, would be entitled to workers compensation cover in respect of that work.

### **Clause 7 – Compensation in respect of medical expenses etc**

Subsections 16(6) and (7) of the Act provide for the payment of compensation in respect of certain travel costs incurred in obtaining medical treatment. The clause proposes the omission and substitution of both subsections. The new subsections are substantially to the effect of the subsections replaced, except that the Minister will be able to specify a rate per kilometre in respect of relevant journeys and Comcare will be able to determine a reasonable length for such a journey (proposed subsection (6)) and the reasonable length of the journey must exceed 50 kilometres (proposed subsection (7)).

Subclause 7(2) provides that these amendments apply only to journeys undertaken after the amendments commence.

### **Clause 8 – Compensation in respect of funeral expenses**

This clause increases the maximum amount of compensation payable in respect of funeral expenses from \$1,500 to \$3,500. This change applies only in respect of a funeral taking place after the commencement date. Sub-clause 8(3) makes a consequential amendment relating to the operation of section 13 of the Act, which provides for the indexation of certain amounts in the Act including the amount of compensation in respect of funeral expenses.

### **Clause 9 – New Section**

This clause provides for the insertion of a new section 21A.

#### **Proposed Section 21A – Compensation for Injuries resulting in incapacity if employee is in receipt of a superannuation pension and a lump sum benefit**

Sections 20 and 21 of the Principal Act contain formulae for the calculation of weekly compensation benefits to employees who have retired following a work-related injury and, as a result of their retirement, are in receipt of a superannuation benefit. Section 20 provides that the amount of compensation payable each week to a person in receipt of a weekly superannuation pension is the amount that would otherwise have been payable to that person under section 19 of the Principal Act, less the amount of that pension and the amount of the contributions that the employee would have been required to pay had he or she remained in employment. Section 21 of the Principal Act applies to persons who received a lump sum superannuation benefit on their retirement. One five hundred and twentieth of the lump sum is deducted from the amount of the compensation that would otherwise have been payable to the person each week, as well as the superannuation contributions that would have been payable by that person.

The great majority of employees covered by the Act receive their superannuation entitlements either in the form of a lump sum or a weekly pension. However, a number of Commonwealth employees are members of superannuation schemes to which the Commonwealth or a Commonwealth authority contributes on their behalf under which benefits may be paid by way of a lump sum and a weekly benefit. Neither section 20 nor section 21 can have any application to employees whose superannuation benefits are paid in this manner, and proposed new section 21A would provide rules for the calculation of weekly compensation benefits to them.

The formula contained in proposed section 21A is a combination of the formulae contained in sections 20 and 21. The section 21A formula provides that the amount of compensation payable to a person to whom the new section applies is the amount that would otherwise have been payable under section 19 of the Act, less the amount of the weekly superannuation benefit and the amount of the lump sum superannuation benefit divided by 520. The amount of the superannuation contributions that the person would have been required to pay if he or she had remained in employment will also be deducted from the amount of compensation payable.

### **Clause 10 – Compensation for injuries resulting in permanent impairment**

This clause allows for compensation for permanent impairment where a person has lost the sense of taste or smell. Compensation is payable under the Act to a person who suffers permanent impairment as a result of an injury. However, where a degree of impairment is assessed at less than 10%, such compensation is not payable. The loss of the sense of taste or smell is rated as a 5% impairment. This means that no compensation for permanent impairment has been payable in respect of such loss. While the amendment proposed does not alter the degree of

impairment that the loss of either or both senses represents, it does allow for the payment of an appropriate level of compensation for such loss as a permanent impairment. It does so by making these losses exceptions to the 10% rule. By subclause 10(2), the amendment made by the clause applies to any determination, reconsideration or review of a claim made after the commencement of the clause, whether the relevant claim was made before or after that commencement.

### **Clause 11 – Redemption of compensation**

Section 30 of the Principal Act contains a formula for the calculation of the value of a lump sum redemption of weekly compensation payments which an injured employee is entitled to receive. The section can only apply if weekly payments fall below a specified level (currently \$62.99 per week) and Comcare is satisfied that the degree of the employee's incapacity is unlikely to change.

The value of the lump sum redemption is calculated under section 30 by multiplying the daily compensation payable by the number of days remaining until the employee's 65th birthday. That amount is then discounted by the "specified rate" (3%). An employee receiving \$50 per week on the day before his 62nd birthday would therefore be entitled to a lump sum of \$7,586.79, calculated as follows:

$$\frac{(\$50\text{pw} \times 1095 \text{ days})}{7} \text{ less } 3\% \text{ of } \frac{(\$50 \times 1095)}{7}$$

The discount procedure was intended to reduce the lump sum so that it would represent the "Nett Present Value" to the employee of receiving a lump sum and having access to those funds and the interest that would accrue, rather than a relatively small weekly benefit. Such discounting is a common actuarial procedure in the calculation of redemption amounts.

The current formula in section 30 contains an error, the result of which is merely to discount the lump sum by 3%, rather than to discount it so that it represents the Nett Present Value of the redemption amount. Clause 11 remedies that error by omitting the current formula and substituting a new formula:

$$\frac{52 \times \text{amount per week} \times [\text{specified number} + 1]^n - 1}{\text{specified number} \times \{(\text{specified number} + 1)^n\}}$$

The "specified number" in the new formula is effectively the discount rate. The symbol "n" is the number of days between the day on which the lump sum is calculated and the day on which the employee reaches 65, divided by 365.

The effect of the new formula may best be demonstrated by comparing the result of its application with the application of the current formula. Using an employee in the same situation as the employee in the example above and the same discount rate (expressed as decimal number – 0.03 – rather than 3%), the value of the redemption would be \$7,354.39. The value of "n" in this example is 1,095 divided by 365, or 3. The calculation is as follows:



$$\frac{52 \times \$50pw \times [(0.03 + 1)^3 - 1]}{0.03 \times [(0.03 + 1)^3]} =$$

$$\frac{\$2,600 \times (1.092727 - 1)}{0.03 \times 1.092727} = \frac{\$241.0902}{0.0327818} = \$7,354.39$$

### **Clause 12 – Interpretation**

Section 60 of the Act provides for the interpretation of terms used in Part VI of the Act which concerns the reconsideration and review of determinations. This clause makes amendments to the section to reflect the extension of the Act to licensed authorities.

Paragraph 12(b) inserts a new definition of "determining authority" which is defined as meaning the person who makes a determination of a claim.

Paragraph 12(d) omits paragraph 60(2)(c) of the Act and adds four new paragraphs to subsection 60(2) concerning the parties to certain proceedings under the Act., The new paragraphs reflect the full range of employees to be able to be afforded cover under the Act.

Paragraph 12(e) inserts a new subsection 60(3) which will ensure that subsection 60(2) has effect in the light of the licensing provisions of the Act.

### **Clause 13 – Reconsideration of determinations**

Section 62 of the Act provides for the reconsideration of determinations by those who have made them. The clause omits subsection 62(2) and substitutes a new subsection which provides for the parties to request that a determination be reconsidered by the determining authority. The proposed new subsection will ensure the internal consistency of the Act in the light of the licensing provisions.

### **Claus 14 – Applications to the Administrative Appeals Tribunal**

This clause repeals and substitutes section 64 of the Act. The proposed new section 64 provides for the parties to apply to the Administrative Appeals Tribunal for review of a reviewable decision. The essential principle to which the Act will give effect is that any party affected by a decision, except one that has made the decision either itself or by its contracted agent, may seek review of the decision.

### **Clause 15 – Costs of Proceeding before Administrative Appeals Tribunal**

Paragraph 15(a) inserts in section 67 of the Act a definition of "responsible authority" for the purposes of that section. A responsible authority is to be Comcare, unless a determination affects a licensed authority holding a Class 1 or Class 3 licence or a licensed corporation. In the case of such a licensed authority, the responsible authority is to be that authority and, in the case of a licensed corporation, that corporation. Paragraph 15(h) inserts in the section a new subsection (8B). Under that proposed new subsection, if a licensed authority or

licensed corporation seeks review of a reviewable decision and does not achieve a favourable result, the Administrative Appeals Tribunal may order that the claimant's costs be paid by the responsible authority.

Paragraphs 15(b), (c), (e), and (i) ensure that certain references to authorities are references to the "responsible authority".

Paragraphs 15(d) and (f) ensure that certain references to authorities in subsections (3) and (4) are references to the "determining authority". This term is defined in section 60 of the Act.

Paragraph 15(g) omits a reference to the determining authority and substitutes a reference to Comcare. Paragraph 15(j) omits from subsection 10 a reference to "determining authority" and substitutes a reference to "person". This is a drafting change.

### **Clause 16 – New section**

This clause inserts a proposed new section 70B.

### **Proposed section 70B – Formation of Subsidiaries**

This proposed new section will allow Comcare to form incorporated companies for the purposes of the performance of its functions or for the performance of any function under the Act able to be performed by a subsidiary of Comcare. The section limits the purposes for which Comcare may form subsidiaries. Such subsidiaries will be governed by the Corporations Law and their memoranda and articles of association in the usual way.

### **Clause 17 – Guidelines by Commission**

This clause amends section 73A of the Act. It ensures that general policy guidelines may be issued by the Commission to the principal officer of a Comcare subsidiary with which the holder of a Class A Licence has contracted for provision of claims management services, and to the principal officer of the holder of a Class B Licence. New subsections are to be added to section 73A of the Act to ensure compliance with such guidelines.

Proposed subsection 73A(7) will bind a Comcare subsidiary to follow guidelines issued to its principal executive officer. Proposed subsection 73A(8) will similarly bind a Class B Licence holder and any person (including a Comcare subsidiary) contracted to provide it with claims management services.

### **Clause 18 – Establishment**

This clause amends section 89A of the Act to change the name of the Commission from the "Commission for the Safety Rehabilitation and Compensation of Commonwealth Employees" to the "Safety Rehabilitation and Compensation Commission".

### **Clause 19 – Functions**

Section 89B of the Principal Act sets out the functions of the Commission. This clause amends the section to reflect the role of the Commission in relation to licensed corporations.

### **Clause 20 – Annual Reports**

This clause inserts in section 89S of the Act a reference to licensed corporations.

### **Clause 21 – Insertion of New Part VIII B – Liability of Certain Corporations to Pay Compensation to their Employees**

This clause proposes the insertion of a new Part VIII B concerning the liability of certain corporations to pay compensation to their employees. The proposed Part is closely modelled on Part VIII A, which concerns licensed authorities.

### **Proposed section 108A – Object of Part**

Proposed section 108A expresses the object of the new part as being to enable certain corporations to seek to have the Act apply in relation to their employees. It notes that the Minister is empowered to declare a corporation to be an eligible corporation and, if such a declaration is made, the corporation concerned may be granted a licence under the Part. If a licence is granted, the Act applies in a similar way to the way in which it applies to employees of the Commonwealth and of Commonwealth authorities.

### **Proposed section 108B – Definitions**

This proposed section defines certain terms used in proposed Part VIII B. 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 108C – Power of Minister to declare a corporation to be eligible to be granted a licence**

This proposed section allows the Minister to declare certain corporations to be eligible to be granted a licence under the new Part. In order to be so declared, a corporation must be a corporation within the meaning of the Act, that is, one which is, but is about to cease to be, a Commonwealth authority, was previously a Commonwealth authority or is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority.

### **Proposed section 108D – Classes of licence**

This proposed section identifies the two classes of licence that may be granted to corporations under this proposed Part as Class A licences and Class B licences. A Class A licence is one for a self insurer, claims management functions for which are to be performed, under contract, by a Comcare subsidiary. A Class B licence is one for a corporation to both self insure and to determine the claims of its staff. Under a Class B Licence, the corporation may, in accordance with a condition to which its licence is subject, determined by the Commission, contract for the performance of claims management functions by a Comcare subsidiary or other person such as a private sector insurer.

### **Proposed section 108E – Application for licence**

Proposed subsection 108E(1) allows an eligible corporation to apply to the Commission for a licence under the proposed Part.

Proposed subsection 108E(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 corporation, be accompanied by such documents as the Commission directs and be lodged with the Commission. Under proposed subsection 108E(3) an applicant 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 applicant 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 but before the licence issues (proposed subsection 108E(4)).

If an application fee is not paid under paragraph (4)(b), it may be recovered by the Commonwealth as a debt due to the Commonwealth by legal action (proposed subsection 108E(5)). Proposed subsection 108E(6) allows a corporation to withdraw an application at any time before the licence is cancelled and, if the application is withdrawn, the application fee may be reduced having regard to the work performed on it. Where the fee has already been paid, the amount of the reduction is to be refunded. Proposed subsection 108E(7) provides for the appropriation of the Consolidated Revenue Fund for this purpose.

### **Proposed section 108F – Consideration of Application**

The Commission is to be required to consider each application in accordance with criteria applicable under the Act and is to give written notice to the applicant of its decision (proposed subsection 108F(1)). Such a notice is to include a brief statement of reasons (proposed subsection 108F(2)).

### **Proposed section 108G – 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 an eligible corporation. The criteria for a Class A licence relate to the adequacy of the corporation's financial resources,

whether the corporation will have claims management carried out by a Comcare subsidiary, whether compensation payments would be met if the corporation were wound up and any other relevant matters (proposed subsection 108F(2)). The criteria for a Class B licence are the ability of the authority to meet claims management standards, the likely attitude to the grant of the licence of the corporation's employees and the criteria applicable to a Class A licence other than that relating to a Comcare subsidiary (proposed subsection 108G(3)).

### **Proposed section 108H – Conditions of licence**

Proposed subsection 108H(1) sets out the conditions to which a licence is to be subject. Those conditions require a licensed corporation to comply with the requirements of the Act, pay any annual licence fees applicable to it, obtain such bank or other guarantees in respect of the discharge of claims as the Commission directs, comply with all relevant occupational safety, health and rehabilitation laws and meet such other conditions as the Commission determines.

Proposed subsection 108H(2) requires the Commission, in exercising its powers under paragraph 108H(1)(c) to have regard to its estimate of the corporation's claims liability.

Proposed subsection 108H(3) 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 108H(4) gives examples of the conditions to which a licence may be made subject. Those conditions are as follows:

- . a condition that the licensed corporation will provide certain information and documents to the Commission;
- . a condition relating to the submissions able to be put in certain circumstances by the licensed corporation to a Court or Tribunal in proceedings in relation to a matter arising under the CERC Act;
- . a condition that the licensee will maintain such funds as the Commission directs, to meet its liabilities;
- . a condition that reconsideration of determinations is to be carried out by employees of the Commonwealth or of a Commonwealth authority or of a Comcare subsidiary;
- . in the case of a Class B licence, a condition that the corporation's claims management function may be performed by a Comcare subsidiary or another person named in the condition.

The Commission is not to make a Class B Licence subject to a condition allowing the contracting out of the claims management function to a person other than a Comcare subsidiary, unless it is satisfied of certain matters. They are that the person will be able to meet claims management standards and will perform that

function consistently with the Act (including directions of the Commission), the licence and any licence conditions.

Proposed subsection 108H(6) requires the Commission, if it varies the conditions to which a licence is subject, to give to the licence holder 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 108H(7), a variation of a licensed condition takes effect when the notice of variation is published in the Gazette.

### **Proposed section 108J – 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 108J(1)). Proposed subsection 108J(2) allows the Commission to extend a licence for such period or periods as it thinks fit.

### **Proposed section 108K – Grant of licence**

Where the Commission decides to grant a licence, 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. It must issue the licence to the corporation (proposed paragraph 108K(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 108K(2)).

### **Proposed section 108L – Effect of grant of Class A Licence**

Proposed subsection 108L(1) sets out the effect of a Class A licence.

Proposed subsection 108L(2) provides that a licensed corporation is to make compensation and other payments required by the Act in respect of an injury suffered or sustained after the commencement of the licence. State and Territory workers compensation law does not apply to such an injury.

Under proposed subsection 108L(3), the determination of compensation claims is the responsibility of a contracted Comcare subsidiary, not of licensed corporations.

Proceedings are to be brought against the licensed corporation and, when brought, the corporation must tell Comcare which is entitled to become a party to the proceedings (proposed subsection 108L(4)). Comcare may become a party to proceedings by filing a notice in the registry of the Court or Tribunal concerned (proposed subsection 108L(5)). It must serve a copy of the notice on each other party to the proceedings (proposed subsection 108L(6)).

Proposed subsection 108L(7) makes clear that the grant of a licence under the Act does not affect any liability of the corporation under State or Territory law, whether imposed before or after the grant of the licence, in respect of injuries to its employees before the grant of the licence.

### **Proposed section 108M – Effect of grant of Class B Licence**

Proposed subsection 108M(1) sets out the effect of a Class B licence.

Proposed subsection 108M(2) provides that a licensed corporation is to make compensation and other payments required by the Act in respect of an injury suffered or sustained after the commencement of the licence. State and Territory workers compensation law does not apply to such an injury. The Act does not require compensation payments under the Act to be made in respect of an excluded injury as defined. State and Territory law, as the case may be, continues to apply to an excluded injury and to any other injury to which the Act does not apply.

The licensed corporation is to have the responsibility for determining claims for compensation and other payments under the Act (proposed subsection 108M(3)).

Proceedings are to be brought against the licensed corporation and, if they are so brought, the corporation must tell Comcare which is entitled to become a party to proceedings by filing a notice in the registry of the Court or Tribunal concerned (proposed subsection 108M(5)). It must serve a copy of the notice on each other party to the proceedings (proposed subsection 108M(6)). Proposed subsection 108M(7) makes clear that the grant of a licence under the Act to a corporation does not affect any liability of the corporation, whether imposed before or after the grant of the licence, in respect of injuries to its employees before the grant of the licence.

### **Proposed section 108N – Functions of licensed corporations**

Proposed subsection 108N(1) gives the holder of a Class A Licence the function of making payments accurately and quickly in accordance with determinations made by the relevant Comcare subsidiary in the discharge of the licensee's liabilities and of complying with any conditions to which its licence is subject.

Proposed subsection 108N(2) casts upon a licensed corporation holding a Class B Licence the functions of making determinations and payments accurately and quickly, maintaining contact with the Commission and with Comcare to avoid inconsistency in administrative practice and procedures and of complying with any conditions to which its licence is subject.

### **Proposed section 108P – Manner in which claims are to be determined**

A licensed corporation or Comcare subsidiary is required to determine claims for compensation in the same manner as Comcare. It is to be guided by equity, good conscience and the substantial merits of the case, without regard to technicalities.

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

### **Proposed section 108Q – Licence fees**

Proposed section 108Q sets out the annual fees payable while a licence is in force.

Proposed subsection 108Q(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 corporation's performance, plus a proportion of the costs incurred by Comcare in providing assistance to the Commission under section 72A of the Act that are reasonably attributable to the corporation.

By subclause 108Q(4), fees are a debt due to the Commonwealth and payable to Comcare.

### **Proposed section 108R – Directions by Commission**

Proposed section 108R will allow the Commission to issue directions to principal officers of licensed corporations concerning the performance of their functions or the exercise of powers. Such a direction may be general in nature, or may relate to a particular matter or class of matters (proposed subsection 108R(1)).

Proposed subsection 108R(2) will provide that, without limiting the generality of the Commission's power to issue directions to a licence, the Commission can direct a licensed corporation which has failed to comply with a condition of its licence of comply with the condition.

By subsection 108R(3), a licensed corporation and any person acting on its behalf, is required to comply with any directions given to it by the Commission.

### **Proposed section 108S – Corporations holding a Class B Licence may arrange for another person to perform certain claims management functions on behalf of the corporation.**

Proposed subsection 108S(1) allows a licensed corporation, subject to proposed subsection 108S(2), to contract with another person to perform all or part of its claims management functions. Under proposed subsection 108S(2), such a contract does not come into force until the Commission has named the person in an appropriate condition to which the licence is subject.

### **Proposed section 108T – Revocation of licence for breach of condition**

Proposed section 108T allows the Commission to investigate an apparent breach of a condition of a licence by a licensed corporation (or in the case of the holder of a Class B Licence, also by a person contracted to perform claims management functions on its behalf). Under proposed subsection 108T(1), the Commission may advise the corporation 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 revoke the licence (proposed subsection 108T(2)).

If the Commission decides to revoke a licence, subsection 108T(3) requires it to advise the corporation 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 108U – Revocation of licence at request of licensed corporation**

Proposed section 108U allows the Commission to revoke a licence at the request of a licensed corporation. Proposed subsection 108U(2) requires the Commission to advise the corporation of its decision and its date of effect. The Commission must publish in the Gazette notice of its decisions under this section and notice of the date of effect of the revocation.

#### **Proposed section 108V – Date of effect of revocation**

By proposed section 108V, the date of effect of a 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 108W – Effect of revocation of licence**

Proposed section 108W sets out the effect of revocation of a licence under Part VIII B.

The corporation concerned is not liable to pay compensation under the Act to any of its employees who are injured after the revocation (proposed subsection 108W(2)). Instead, unless another licence under the Act is granted, State or Territory law will apply in respect of such injury.

The corporation's liability to pay compensation to employees injured before the date of revocation is not affected and proceedings in respect of that liability may continue to be instituted as if the licence had not been revoked.

Subject to proposed subsections (5) and (6), the responsibility for making determinations as to the liability of the corporation in relation to claims under the Act continues to be the relevant Comcare subsidiary, or the corporation, as the case may be (proposed subsection 108W(4)).

Under proposed subsection (5) and (6), that responsibility may, by determination of the Commission, be passed to another person.

Proposed subsection 108W(7) provides that the revocation of the licence is not to affect a party's right to bring proceedings in respect of any matter relating to an injury suffered or sustained before the revocation and thus covered by the Act.

### **Proposed section 108X – Records**

Proposed section 108X requires the Commission to keep records of all applications for licences, decisions to refuse or grant applications, conditions attached to licences, and the expiration and revocation of licences. Particulars of these matters must be provided by the Commission in its annual report.

### **Proposed section 108Y – Comcare subsidiaries**

Proposed subsection 108Y(1) requires a Comcare subsidiary that has entered into a contract with a licensed corporation to do such of certain stated things as are relevant to its obligations under that contract. The stated things are to make determinations quickly and accurately, to minimise the duration of employees injuries by arranging for their rehabilitation, to cooperate with and provide products and services to, other persons and organisations, including the corporation, to reduce the incidence of injury to its employees and ensure that claims are determined quickly and accurately, and publish relevant information.

Proposed subsection 108Y(3) provides that the Auditor-General is to be the auditor of each Comcare subsidiary.

Comcare's annual accounts are to include a copy of the accounts for each Comcare subsidiary (proposed subsection 108Y(4)).

### **Clause 22 – Insertion of new sections**

This clause provides for the insertion of proposed new sections 114A and 114B.

### **Proposed section 114A – Comcare may write off debt**

This clause allows Comcare, by notice in writing, to write off a debt due to Comcare. Writing off a debt is an administrative decision not to recover the debt, although it still remains legally payable.

### **Proposed section 114B – Comcare may waive debt**

Proposed subsection 114B(1) allows Comcare, by notice in writing, to waive a debt due to Comcare. Waiving a debt extinguishes the liability to pay. Comcare, in exercising this power, is bound to act in accordance with applicable Ministerial determinations (proposed subsection 114B(2)).

Under proposed subsection 114B(3), the Minister may give, revoke and vary determinations to Comcare about the exercise of its power of waiver. Each determination under proposed subsection 114B(3) is to be laid before each House

of Parliament within fifteen sitting days of that House (proposed subsection 114B(4)).

Proposed subsection 114B(5) provides for the coming into effect of a waiver by Comcare.

### **Clause 23 – New section**

This clause provides for the omission and remaking of section 121 of the Act and the insertion of a new section 121A.

### **Proposed section 121 – Disallowable instruments**

The principal effect of the remaking of section 121 is to include, as disallowable instruments, declarations under proposed section 108C and determinations under proposed subsection 114B(3).

### **Proposed section 121A – Confidential commercial information not to be published**

This proposed section ensures that provisions of the Act requiring publication of any matter relating to a licensed corporation or a licensed authority do not require publication of confidential commercial information. Instead, a general description of the matter may be published.

### **Clause 24 – Redemption on request by former employee**

Section 137 of the Principal Act contains a formula for calculating the value of a lump sum redemption of weekly compensation payments to former employees (that is, persons who had ceased to be employed by the Commonwealth or a Commonwealth authority before 1 December 1988 – the date of commencement of the Principal Act – and who were receiving compensation on that date).

Under section 137, a former employee can request a redemption of his or her weekly compensation payments if they fall below a specified amount (currently \$62.99 per week).

The formula in section 137 as it is currently drafted contains the same error as exists in the formula in section 30 of the Principal Act. That is, a lump sum redemption amount calculated under sections 30 or 137 is merely reduced by the discount rate (3%) rather than being reduced so that it represents the Nett Present Value to the employee or former employee of having his or her weekly compensation benefits redeemed.

The error in section 30 of the Principal Act will be corrected by a new formula to be inserted by Clause 11. A detailed explanation of the effect of the error in section 30 and the effect of the new formula is set out in the Notes to that Clause.

The formula in section 137 as currently drafted provides that the value of the lump sum redemption is the amount of compensation payable per week multiplied by the number of years in the complete expectation of life of the employee at the date of the calculation. That amount is then discounted by 3%. In other words, the error that exists in section 30 of the Principal Act and which would be corrected by Clause 11 is repeated in section 137.

Section 137 as currently drafted also fails to take into account the fact that benefits payable to former employees are reduced under section 134 of the Principal Act after their 65th birthday. In addition, section 137 fails to take account of the possibility that a former employee's benefit has fallen below the specified threshold of \$62.99 per week because he or she is becoming less incapacitated for work.

Clause 24 would remedy these deficiencies by repealing section 137 and substituting a new section. New subsection 137(1) provides for the redemption of weekly payments on request by a former employee if the former employee is receiving less than \$62.99 per week and if the degree of his or her incapacity is unlikely to change. The value of the redemption will be calculated by applying the formulae contained in new subsections 137(3) and (4).

The formula in new subsection 137(3) is identical to that contained in section 30 as amended by Clause 11. That formula enables a calculation to be made of the Nett Present Value of the redemption up to the former employee's 65th birthday.

The Nett Present Value of the redemption to the employee after his or her 65th birthday is calculated by applying the formula set out in new subsection 137(4). That formula is similar to the formulae in section 30 as amended and new subsection 137(3), except that:

- . the amount to be redeemed is the reduced amount that would be payable after the former employee's 65th birthday, as calculated under section 134 of the Principal Act; and
- . the duration of those reduced payments is calculated by reference to the number of years that the former employee could expect to live after his or her 65th birthday. The number of years that a former employee could expect to live is calculated in turn by reference to the Australian Life Tables published from time to time by the Australian Statistician.

The amount of the redemption will be the sum of the two amounts calculated under new subsections 137(3) and (4).

### **Clause 25 – Consequential amendments**

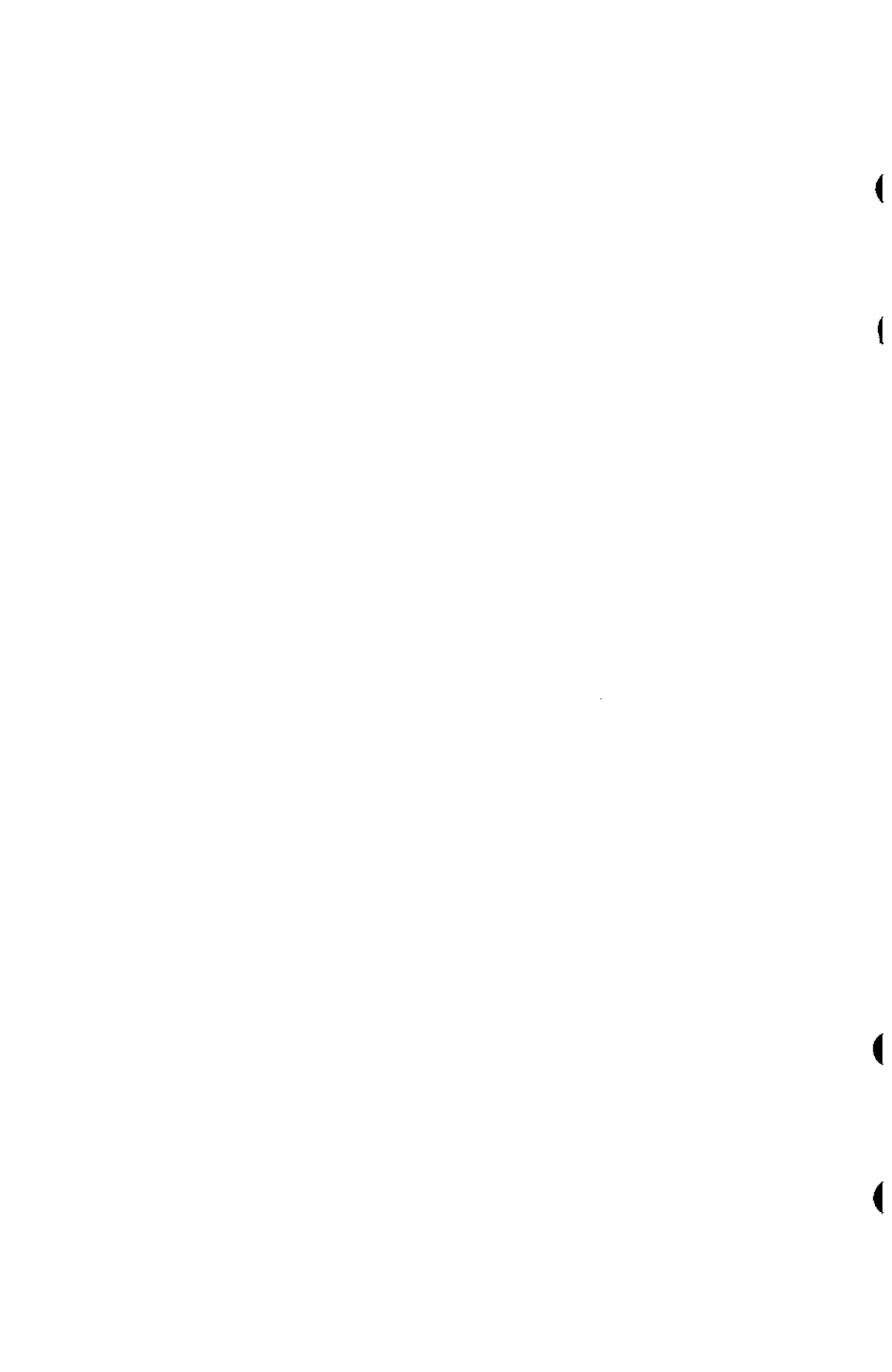
This clause provides for the making of the amendments to the Act set out in Schedules 1 and 2.

**Schedule 1 – Amendments consequential on the insertion of Part VIII B in the Principal Act**

The amendments made to the Act by Schedule 1 are consequential and drafting amendments required to be made as a result of the extension of the Act to licensed corporations. They adapt the Act so that it can in all relevant respects apply to the employees of licensed corporations.

**Schedule 2 – Amendments consequential on insertion of section 21A in the Principal Act**

The amendments made to the Act by Schedule 2 are required to insert references to proposed section 21A where references to its present companion sections 21 and 22 are now made.



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