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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

**Commonwealth Employees'
Rehabilitation and Compensation
Amendment Bill 1997**

EXPLANATORY MEMORANDUM

(Circulated by authority of Mr Allan Morris MP)

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COMMONWEALTH EMPLOYEES' REHABILITATION AND COMPENSATION AMENDMENT BILL 1997

Outline

The purpose of this Bill is to amend the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* so as to provide that appeals against decisions by Comcare may be made to the Social Security Appeals Tribunal (SSAT). Presently the only external appeal available under the Comcare legislation is to the Administrative Appeals Tribunal (AAT). For many people an appeal to the AAT can be a difficult, complex and even threatening process. The Bill amends the Principal Act so as to provide that the first level of external appeal is to the SSAT. Other amendments will still allow recourse at a later stage to the AAT.

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NOTES OF CLAUSES

Clause 1 (Short Title) and Clause 2 (Commencement)

These clauses need no further explanation.

Clause 3 Schedule

This clause provides for the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* to be amended as set out in the Schedule.

SCHEDULE 1 – Amendments of the Commonwealth Employees' Rehabilitation and Compensation Act 1988.

Item 1

Section 63 of the Principal Act requires that a person who has made a 'reviewable decision', that is, a decision under section 38 or section 62 of the act, to give to the claimant a written notice setting out the terms of the decision, the reasons for it and a statement to the effect that an appeal may be made to the AAT. Item 1 amends section 63 so that instead of providing a statement to the effect that an appeal can be made to the AAT, the written statement must advise the claimant that an application can be made to the SSAT for review of the decision.

Item 2

Item 2 inserts new sections 63A to 63H.

Proposed section 63A is a substantive provision to provide that applications may be made, either by the Commonwealth or by a claimant, for review of a decision by the SSAT. No other person may appeal to the SSAT in respect of a decision. Subsection 63A (3) provides that an application with the SSAT must be made within three months of the

decision having been made unless Comcare, because of special circumstances, allows a longer period.

Proposed section 63B provides that in carrying out its functions under this act the SSAT must pursue the objective of providing a mechanism for review that is fair, just, economical, informal and quick.

Proposed section 63C sets out the requirements for applications to the SSAT for review of decisions. Applications must be in writing, must be delivered or sent to an office of Comcare or of the SSAT, and they may include a statement of reasons as to why the review is sought.

Proposed section 63D provides that if a decision is varied or a new decision is made before a review is completed the application for review is to be treated as if it was an application for review of the decision as varied, or the new decision etc. Subsection 63D (2) provides that after a decision has been varied or a new decision made etc. the applicant may withdraw the application for review, or proceed with it.

Proposed section 63E provides for withdrawal of an application for review of a decision. Applications for withdrawal must be in writing and must be sent or delivered to an office of Comcare or of the SSAT.

Proposed section 63F provides that the tribunal must, in respect of an application for review, either (a) confirm the decision, or (b) vary the decision, or (c) set the decision aside and make a new decision or refer the matter back to Comcare in accordance with any directions or recommendations the tribunal may make. Proposed subsection 63F(2) allows the National Convener to decide that an application should not be considered further when the National Convener is satisfied, either after having communicated with the applicant or having made reasonable attempts to do so, that the person does not intend to proceed with the application or that it is reasonable not to proceed with it.

Proposed section 63G requires that after the SSAT has made a decision on a application for review the National Convener must provide to each party a statement in writing of the SSAT decision and the reasons for it.

Proposed section 63H provides the date of effect of SSAT decisions on reviews. Unless otherwise provided for, the decisions of the SSAT come

into operation immediately they are given, although the SSAT may provide that a decision comes into effect on a later date to be specified. Where the SSAT varies the decision or sets it aside and makes a new decision it may order that the decision as varied, or the new decision, has effect or is taken to have had effect on and from the day on which the original decision had effect - proposed subsection 63H (3).

Item 3

Item 3 inserts new subsections 64 (1) and (1A). The purpose of these subsections is to provide that after a decision has been reviewed by the SSAT and affirmed, varied or set aside, an application may be made to the AAT for review of the decision of the SSAT.

Item 4

Item 4 inserts proposed new subsection 64A in the Principal Act. This concerns the operation of the provisions of section 41 of the Administrative Appeals Tribunal Act 1975. The general purpose of section 41 of the AAT Act is to provide that with some exceptions the making of an application to the AAT for review of a decision does not effect the operation of that decision or the taking of action to implement it. Proposed subsection 64A (1) provides that the AAT Act applies to an application for review under the Comcare Act (section 64) as if the reference in subsection 41 (4) of the AAT Act to the person who made the decision were a reference to each party to the review by the SSAT. The purpose of the subsection 41 (4) of the AAT Act is to provide that decisions should not be made unless the interested parties have had an opportunity to make a submission in relation to the matter under review. Proposed subsection 64A (2) adapts other references in section 41 of the AAT Act to the varied decision or new decision etc. following the SSAT consideration of the matter.

Item 5

Item 5 inserts a new subsection 3A in section 65 of the Act to provide that section 28 of the AAT Act applies as if references to the person who made the decision were references to the National Convener (section 28 refers to obligations in respect of the provision of reasons for decisions).

Item 6

Item 6 proposes the addition of provisions to section 65 of the Principal Act. These provisions adapt certain requirements of the AAT Act to applications for review to the AAT under the Comcare Act. These are section 29 - the manner of applying for review; Section 30 - the definition of parties to the AAT proceedings; Section 37 - the lodging of material documents with the AAT; subsection 41(4)—opportunity to make submissions; and Section 42A - the discontinuance, dismissal, reinstatement etc. of an application.

Item 7

Item 7 makes a consequential amendment of section 67 of the Principal Act to omit references to 'under this Part' wherever they occur and substitute references to 'section 64'. This is because the phrase under this Part is no longer appropriate because, if the bill is to be passed, under the Part appeals could be lodged with either the SSAT, or the AAT (or both). It is therefore desirable that the references in section 67 be amended.

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