

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL 1996

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industrial Relations,
the Honourable Peter Reith MP)

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
BOSTON

INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL 1996

OUTLINE

This bill amends 2 Acts.

Schedule 1 amends the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OHS Act). The amendments proposed in Part 1 of Schedule 1 relate to the procedure for determining the contribution payable by each Department and Commonwealth authority towards the cost of the administration of the OHS Act.

The amendments propose that Comcare be responsible for determining the amount payable by a Department or authority. There is provision for a Department or authority to seek a review of the amount determined. This review will be conducted by Comcare in the first instance and then if the Department or authority so wishes, by the Safety, Rehabilitation and Compensation Commission (the Commission).

Part 2 of Schedule 1 proposes a number of other amendments to the OHS Act:

- to provide that Comcare shall provide advice on occupational health and safety matters to employers, employees and contractors either on its own initiative or on request;
- to transfer certain powers in relation to investigations from the Commission to the Chief Executive Officer of Comcare;
- to increase the maximum penalties that can be imposed under the Act;
- to ensure that a document which is cited in the Act's regulations has effect as amended from time to time without the need to amend the regulations;
- to require that a document which is incorporated in a code of practice be available for inspection at the offices of Comcare.

Schedule 2 amends the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act). Part 1 of Schedule 2 proposes amendments to the definition of injury and disease in the SRC Act to clarify the circumstances in which an employee is entitled to receive compensation for injury pursuant to the SRC Act.

Part 2 of Schedule 2 proposes a number of other amendments to the SRC Act. These relate primarily to the procedure for determining the premiums payable by each Department and Commonwealth authority under the SRC Act. The amendments correspond to the changes proposed in Schedule 1 in respect of the determination by Comcare of contributions pursuant to the OHS Act.

Part 3 of Schedule 2 also proposes to amend the SRC Act:

- to allow the Chief Executive Officer of Comcare to sub-delegate any of the powers or functions delegated by the Commission;

to enable Comcare to charge a fee for the provision of claims management services to Class 1 licence holders;

to reflect an existing administrative arrangement whereby the Northern Territory government reimburses Comcare for payments of compensation to certain persons and the associated administrative costs; and

to ensure that compensation benefits are maintained at a minimum level of 70% of indexed normal weekly earnings in all cases.

FINANCIAL IMPACT STATEMENT

The amendments to the definition of injury and disease in the SRC Act proposed in Part 1 of Schedule 2 will, in the first instance, provide savings in Comcare's administrative costs and ultimately provide ongoing savings in administrative costs for Commonwealth agencies to assist them in meeting their running costs savings targets.

The savings which will accrue directly to the budget from the amendments in Part 1 of Schedule 2 are estimated to be \$3 million in 1996-97, \$10 million in 1997-98, \$16 million in 1998-99 and rising to \$24 million in 1999-2000. These savings will be spread across all Commonwealth departments and authorities covered by Comcare. Further savings will apply to other administrators in the jurisdiction including the Australian Defence Forces who are covered by the Military Compensation Scheme under the SRC Act, and licensed authorities, such as Telstra and Australia Post.

The proposed amendments in Schedule 1 of the bill and those in Parts 2 and 3 of Schedule 2 will have no direct impact on Commonwealth expenditure.

NOTES ON CLAUSES

Clause 1 - Short title

1. This is a formal provision specifying the short title of the Act.

Clause 2 - Commencement

2. This clause specifies when the various provisions of the Act are proposed to commence. Subclause 2(1) provides that, subject to subclause 2(2) which provides for the commencement of a particular provision of the Act, the Act commences on the day on which it receives Royal Assent.

3. Subclause 2(2) provides that Item 38 of Schedule 1 is to be taken to have commenced immediately after the commencement of section 82 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OHS Act).

Clause 3 - Schedules

4. This clause provides that an Act which is specified in a Schedule is amended as is set out in that Schedule.

SCHEDULE 1 - AMENDMENT OF THE OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) ACT 1991

Part 1 - Amendments relating to contributions

These amendments propose to change the mechanism for calculating and reviewing the contribution payable by each Department and Commonwealth authority towards the cost of the administration of the OHS Act.

Currently, the Safety, Rehabilitation and Compensation Commission (the Commission) prepares a contribution estimate for each Department and Commonwealth authority. This estimate is given to the Secretary of a Department (or the principal officer of an authority) who has 14 days in which to object to the estimate.

If the Secretary (or principal officer) objects, the Commission reviews the estimate and may either confirm the estimate, or vary it and confirm it as varied. If the Secretary (or principal officer) still objects to the estimate (or the new estimate as varied by the Commission) he or she may ask the Minister to review the estimate. The Minister must review the estimate and either confirm the estimate or vary it and confirm it as varied.

It is proposed to give Comcare rather than the Commission, the responsibility for calculating the contribution estimate, and undertaking the initial review (where sought). The Commission will supervise the methods used by Comcare to calculate contributions and the Commission, rather than the Minister, will be the final avenue of appeal.

The word “estimates” will no longer be used in relation to contributions. Instead, the Act will refer to “determinations” of contributions.

Item 1 - Subsection 67B(1)

Item 2 - Subsection 67B(1)

1. Items 1 and 2 would amend subsection 67B(1) of the OHS Act to require Comcare to determine the amount of contribution that is to be paid by each Department or Commonwealth authority in a financial year in respect of the costs incurred by the Commission and Comcare in the administration of the Act.

Item 3 - Subsection 67B(2)

2. Item 3 would remove the word “estimate” in subsection 67B(2) of the OHS Act and insert the word “contribution”.

Item 4 - Subsection 67B(3)

Item 5 - Subsection 67B(3)

Item 6 - Subsection 67B(3)

Item 7 - Subsection 67B(3)

3. These items propose to amend subsection 67B(3) to provide that a determination is to be in such form as Comcare considers appropriate or, if the Commission gives a direction as to the form in which determinations are to be prepared, in accordance with that direction.

Item 8 - Subsection 67C

4. Item 8 proposes to replace the word “estimating” with the word “determining” in subsection 67C of the OHS Act.

Item 9 - Subsection 67C

5. Item 9 proposes to delete the reference to the Commission in subsection 67C of the OHS Act and insert a reference to Comcare.

Item 10 - Paragraphs 67C(a) and (c)

6. Paragraphs 67C(a) and (c) of the Act refer to the former *Commonwealth Employees' Rehabilitation and Compensation Act 1988*. Item 10 would delete this reference and replace it with a reference to the *Safety, Rehabilitation and Compensation Act 1988*.

Item 11 - Paragraph 67C(b)**Item 12 - Paragraph 67C(b)**

7. Item 11 proposes to amend paragraph 67C(b) of the OHS Act to provide that in determining the amount of the contribution of a Department or Commonwealth authority, regard is had to the costs likely to be incurred by Comcare and by the Commission in the performance or exercise of a function or power under the Act.

8. Item 12 would exclude from the determination any costs incurred by the Commission pursuant to section 67A of the OHS Act in providing specified services to a Department or Commonwealth authority.

Item 13 - Paragraph 67C(e)

9. Item 13 would simply insert a reference to Comcare in paragraph 67C(e) of the Act.

Item 14 - At the end of 67C

10. Item 14 proposes that in estimating the amount of the contribution of a Department or Commonwealth authority, Comcare must have regard to any guidelines issued by the Commission in relation to the determination of contributions.

Item 15 - Subsection 67D(1)**Item 16 - Subsection 67D(1)**

11. Item 15 would replace the references to the Commission in subsection 67D(1) of the Act with a reference to Comcare. Item 16 would delete the phrase "prepare an estimate" and insert the phrase "determine an amount".

12. Subsection 67D(1) as amended would provide that the Secretary to a Department, or the principal officer of a Commonwealth authority, must, on written request from Comcare, provide the information which Comcare needs to determine the amount of the contribution of a Department or Commonwealth authority for a financial year.

Item 17 - After 67D

13. This item proposes to insert a new section 67DA -Notice of determination, and a new section 67DB -Payment of contribution.

14. New section 67DA requires Comcare to give a copy of a determination made in relation to a Department or a Commonwealth authority to the relevant Secretary or principal officer.

15. New section 67DB provides that a Department or Commonwealth authority must pay its contribution to Comcare within such period as is specified in the determination.

Item 18 - Section 67E

16. Item 18 proposes to repeal section 67E of the OHS Act. New section 67E provides that the Secretary to a Department, or the principal officer of a Commonwealth authority to which a determination relates may, by written notice of objection, ask Comcare to review the determination.

17. The notice must be given to Comcare within 14 days after the Department or authority received a copy of the determination, and must set out the grounds of objection. As soon as possible after receiving the notice, Comcare must review the determination and decide either to confirm the determination or vary the determination and confirm it as so varied.

18. However, proposed new subsection 67E(4) provides that Comcare need not review a determination if satisfied that the notice of objection is trivial, vexatious, misconceived or lacking in substance.

19. Comcare must give written notice to the Secretary to the Department or the principal officer of the Commonwealth authority of the result of the review of the determination, or of Comcare's decision not to review the determination.

20. To avoid doubt, new subsection 67E provides that an objection by a Department or Commonwealth authority does not remove its obligation to pay the contribution within the time specified in the determination.

Item 19 - Paragraph 67F(1)(a)

Item 20 - Subsection 67F(1)

Item 21 - Subsection 67F(1)

Item 22 - Subsection 67F(1)

Item 23 - Subsections 67F(3) and (4)

21. These items would amend section 67F of the OHS Act.

22. Section 67F currently provides for review by the Minister. As amended, section 67F would provide that if a Department or authority still objects to the determination following a review by Comcare under section 67E of the Act, then the Department or authority may seek a further review by the Commission.

23. New subsections 67F(3) and (4) provide that as soon as practicable after receiving notice of the objection, the Commission must review the determination and decide either to confirm the determination or to vary the determination and confirm it as so varied.

24. The Commission must give written notice of the result of the review to the relevant Secretary to the Department or principal officer of the Commonwealth authority.

Item 24 - Sections 67G, 67H and 67J

25. Item 24 proposes to repeal sections 67G, 67H and 67J and insert new sections 67G - Review by Commission of Comcare's decision not to review determination, 67H - Refund of contributions, and 67J - Interest on late payment.

26. Sections 67G and 67H currently deal with when an estimate takes effect and becomes payable. These matters are now dealt with by proposed items 17 and 18.

27. New section 67G provides that if Comcare decides not to review a determination (pursuant to proposed new section 67E), the Secretary to the Department, or the principal officer of the authority to which the determination relates may ask the Commission to review Comcare's decision.

28. The Commission may either confirm Comcare's decision not to review, or set aside the decision and direct Comcare to review the determination in accordance with section 67E.

29. Proposed new section 67H provides that if a Department or authority has paid its contribution for a financial year and the amount payable is reduced as a result of a review by Comcare or the Commission, then Comcare must pay the Department or authority the difference between the original amount and the reduced amount.

30. Proposed new section 67H also provides for interest to be paid on the difference in respect of each day of the overpayment period. The interest rate would be specified from time to time by the Minister by notice in the Gazette. However, interest would not be payable if it is less than \$100.

31. Section 67J currently provides a penalty for late payment of contributions. Proposed new section 67J provides that if a contribution is not paid in full within the period referred to in section 67DB, then interest is payable on the amount of the unpaid contribution in respect of each day until the day on which the contribution is paid in full.

32. Again, section 67J provides that the interest rate would be specified from time to time by the Minister by notice in the Gazette. However, interest would again not be payable if it is less than \$100.

Item 25 - Section 67K

33. Item 25 is consequential upon the amendment to section 67J proposed by item 24. Item 25 would replace the word "penalty" in section 67K with the word "interest".

34. Section 67K as amended would provide that an amount of contribution, or of interest under section 67J, is a debt due to the Commonwealth and payable to Comcare.

Part 2 - Other amendments

Item 26 - Paragraph 12(1)(b)

35. Current paragraph 12(1)(b) provides that one of the functions of the Commission is to advise employers, employees or contractors either on its own initiative or on request, on occupational health and safety matters affecting such employers, employees or contractors.

36. Item 26 proposes to amend paragraph 12(1)(b) so that the Commission is no longer required to provide information on request, but may still do so on its own initiative.

37. The effect of this and related proposed amendments is that in future, Comcare will respond to requests for information or advice from Department or statutory authorities.

Item 27 - Subparagraph 28(1)(a)(ii)

38. Item 27 would insert a reference to Comcare in subparagraph 28(1)(a)(ii) so as to provide that a health and safety representative may make a request to an investigator, or to Comcare, or to the Commission that an investigation be conducted at the workplace.

Item 28 - Section 39

39. Item 28 proposes to repeal section 39 and insert a new section 38A and 39.

40. New section 38A reflects the amendment proposed by item 26. It provides that Comcare may advise employers, employees or contractors, either on its own initiative or on request, on occupational health and safety matters affecting those employers, employees or contractors.

41. Section 39 currently provides that where the Commission has been requested to advise an employer, employee or contractor about an occupational health and safety matter and the Commission believes that another person has special knowledge or experience, the Commission may refer the employer, employee or contractor to that person.

42. Consistent with the amendments proposed by items 26 and 27, proposed new section 39 provides that where Comcare has been requested to advise an employer, employee or contractor about an occupational health and safety matter and Comcare considers that a person other than a member of its staff, or a consultant to Comcare has special knowledge or experience relevant to the request, Comcare may refer the employer, employee or contractor to that person.

Item 29 - Subsection 41(2)

Item 30 - Subsection 41(2)

Item 31 - Subsection 41(3)

Item 32 - Subsection 41(3)

Item 33 - Subsection 41(4)

Item 34 - Subsection 41(5)

43. Section 41 of the OHS Act concerns the appointment of investigators who investigate compliance with the OHS Act, contravention of the OHS Act and accidents or dangerous occurrences in the performance of work.

44. Item 29 would amend subsection 41(2) so that Comcare may direct an investigator who is not a member of the staff of Comcare to conduct an investigation. Item 30 would further amend subsection 41(2) to provide that Comcare or the Commission may revoke a direction to conduct an investigation.

45. Items 31 and 32 propose to amend subsection 41(3) to provide that the Commission or Comcare may, in writing direct an investigator to conduct an investigation concerning the occupational health and safety policies and practices of a Department or authority, and that the investigator must conduct an investigation unless the direction is revoked.

46. Item 33 would amend subsection 41(4) so that Comcare or the Commission (as the case may be) must inform the Secretary of the Department or the chief executive officer of the Commonwealth authority, of the fact that an investigation of the Department or authority is to be conducted; and the subject matter of the proposed investigation.

47. Item 34 proposes to amend subsection 41(5) to provide that an involved union may make a request to an investigator or to Comcare (as opposed to the Commission) that an investigation be conducted at a workplace.

Item 35 - Subsection 70(7)

48. Subsection 70(3) of the OHS Act provides that a code of practice which incorporates a document prepared by a body, may incorporate that document as in force from time to time.

49. Subsection 70(7) currently provides that the Commission must, at all times, ensure that there is available for inspection at the offices of the Commission an up to date copy of each document that is incorporated in a code of practice under subsection 70(3).

50. Item 35 proposes to amend subsection 70(7) to provide that the Commission must ensure that copies are available at the offices of Comcare. Inspection at Comcare's offices rather than the offices of the Commission is preferable because Comcare's offices are more numerous and therefore more accessible to the public.

Item 36 - Paragraph 82(1)(h)

Item 37 - At the end of paragraph 82(1)(h)

51. Subsection 82(1) currently provides that the Governor-General may make regulations prescribing penalties, not exceeding \$1,000 for offences against the regulations.

52. Item 36 would omit the \$1,000 penalty limit. Item 37 proposes to amend paragraph 82(1)(h) to provide that the regulations may prescribe penalties, not exceeding \$5,000 for individuals and \$25,000 for corporations for offences against the regulations.

53. The increase in the upper penalty limit reflects the serious nature of certain of the offences created in the regulations.

Item 38 - After subsection 82(1)

54. Section 49A of the *Acts Interpretation Act 1901* provides that where a regulation applies, incorporates or adopts any matter contained in a document, that matter has effect only as at the date of the regulation which refers to it.

55. Regulations made under the OHS Act may incorporate or apply various documents which set out standards or codes of practice on occupational health and safety related topics. These standards or codes of practice are updated and amended from time to time.

56. Item 38 would insert a new subsection 82(1A) to override the operation of section 49A of the *Acts Interpretation Act 1901* by allowing the regulations to incorporate, adopt or apply a code of practice, standard, table or any other document as in force from time to time.

57. The amendment would avoid the need to amend the regulations whenever a standard or code of practice which has been adopted is updated or amended. The amendment would apply retrospectively to those regulations which have already been made.

SCHEDULE 2 - AMENDMENT OF THE SAFETY, REHABILITATION AND COMPENSATION ACT 1988

Part 1 - Amendments relating to compensable injury

These amendments clarify the circumstances in which an employee is entitled to compensation for injury pursuant to the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act).

Item 1 - Subsection 4(1) (definition of *disease*)

1. Item 1 proposes to repeal the definition of disease in subsection 4(1) of the SRC Act and insert a provision which provides that *disease* has the meaning given by section 5A.

Item 2 - Subsection 4(1) (definition of *injury*)

2. Item 2 proposes to repeal the definition of injury in subsection 4(1) of the SRC Act and insert a provision which provides that *injury* has the meaning given by section 5B.

Item 3 - After section 5

3. Item 3 proposes to insert new section 5A - Meaning of *disease* and new section 5B - Meaning of *injury*.

4. The SRC Act currently defines disease to mean an ailment or aggravation that was "contributed to in a material degree" by the employee's employment with the Commonwealth or a licensed corporation.

5. The legislative intent behind the current provision was to establish a test requiring a claimant to prove that his or her employment was more than a mere contributing factor in the contraction of the disease. The phrase "contributed to in a material degree" was intended to ensure that the Commonwealth was not held liable to pay compensation for diseases which have little, if any, connection with employment.

6. However, subsequent judicial interpretation of the phrase "contributed to in a material degree" does not require employment to be a significant or substantial contributing factor to a disease.

7. To overcome this, proposed new subsection 5A(1) defines *disease* to mean any ailment suffered by an employee, or the aggravation of any such ailment, to which the employee's employment by the Commonwealth or a licensed corporation contributed in a significant degree (emphasis added).

8. Subsection 5A(2) provides that in determining whether employment contributed in a significant degree to a disease, regard must be had to whether the employee would have contracted, or suffered the aggravation of, the ailment in spite of the employment.

9. Subsection 5A(2) goes on to list a number of specific factors that may be taken into account in determining whether employment contributed in a significant degree to a disease. These factors include

- the duration of the employment, its nature and the particular tasks involved;
- any medical predisposition of the employee to the disease
 - this would not include a predisposition caused by the employment, so that a compensable injury or disease which constituted a medical predisposition of a person to a disease would not be a “medical predisposition” for the purposes of paragraph 5A(2)(c);
- activities of the employee not related to his or her employment, such as domestic, social, sporting, educational or community activities;
- any other matters which might affect the employee’s health.

10. Subsection 5A(3) provides that in this section, *significant degree* means substantially more than a material degree.

11. Subsection 5A(3) is intended to ensure that the requisite link between employment and a disease is substantially more than the current judicial interpretation of “material degree”.

12. The definition of injury in the SRC Act currently excludes any such disease, injury or aggravation suffered by an employee as a result of reasonable disciplinary action taken against the employee or a failure by the employee to obtain a promotion, transfer or benefit in connection with his or her employment.

13. The legislative intent of the exclusion was to ensure that action relating to human resource, personnel or workplace management issues was not obstructed by the lodgement of a compensation claim for occupational stress.

14. However, courts have given the phrase “disciplinary action” an extremely limited meaning which has overridden the original intent to exclude claims resulting from a range of legitimate management actions.

15. Proposed new subsection 5B(1) defines *injury* to mean a disease, a physical or mental injury (other than a disease), or the aggravation of a physical or mental injury which arises out of, or in the course of, employment.

16. Subsection 5B(2) then provides that if a disease results solely or predominantly from reasonable managerial or administrative action taken in a reasonable manner by the employer in connection with the employee’s employment, then the disease is not an injury for the purposes of subsection 5B(1).

17. Subsection 5B(2) further excludes a disease which results solely or predominantly from an expectation or belief that the employer will take a particular reasonable managerial or administrative action.

18. Proposed new subsection 5B(3) provides that if an injury (other than a disease), or the aggravation of a physical or mental injury (other than a disease) results solely or predominantly from reasonable managerial or administrative action taken in a reasonable manner by the employer in connection with the employee's employment, then the injury is not an injury for the purposes of subsection 5B(1).

19. Subsection 5B(3) further excludes an injury which results solely or predominantly from an expectation or belief that the employer will take a particular reasonable managerial or administrative action.

20. To assist the courts in determining the scope of the exclusion in subsections 5B(2) and 5B(3), subsection 5B(4) provides examples of particular actions and decisions which constitute reasonable managerial or administrative action.

21. The examples provided in subsection 5B(4) are not intended to be exhaustive, and the fact that a particular type of action or decision is not specifically referred to will not prevent an employer from arguing that the action or decision in question is a reasonable managerial or administrative action.

22. However, subsection 5B(4) does convey that Parliament does not intend the phrase "reasonable managerial or administrative action" to embrace every instruction of, and action by an employer. The nature of the action which Parliament has in mind is human resource management, personnel or workplace management action.

23. The common element in this type of action is that the action or decision is expressly related to the structure or functioning of the workplace, or the administration of the formal relationship between the employer and the employee. Generally, the phrase "reasonable managerial or administrative action" will not cover an isolated direction, or series of express instructions from the employer concerning the day-to-day tasks which an employee performs.

24. Subsection 5B(6) provides that section 5B does not affect an employee's rights to compensation for a physical injury which results from a physical factor that occurred in the course of the employee's employment. This is necessary to ensure that the operation of the exclusion in subsections 5B(2) and (3) is confined to occupational stress or a stress-related injury or disease.

25. Subsection 5B(7) is a replica of proposed new subsection 5A(3). It explains that in section 5B, *significant degree* means substantially more than a material degree.

Item 4 - Subsections 7(1), (2) and (3)

26. Item 4 would omit the word “material” in subsections 7(1), (2) and (3) of the SRC Act and insert the word “significant”. The amendment is consequential upon the amendments to the definition of *disease* proposed in Items 1 and 3.

Item 5 - At the end of section 7

27. Item 5 would add a new subsection 7(8) which mirrors the explanatory provision in subsection 5A(3) and 5B(7) by providing that *significant degree* means substantially more than a material degree.

Item 6 - Application

28. Item 6 proposes that the amendments made by Part 1 of Schedule 2 have effect only in relation to a claim made after the commencement of that Part.

Part 2 - Amendments relating to premiums

These amendments concern the procedure for calculating and reviewing the premiums payable by each Department and Commonwealth authority under the SRC Act. The amendments correspond to the changes which are proposed in Schedule 1 regarding the determination of contributions pursuant to the OHS Act.

Division 4A of the SRC Act sets out the requirements in relation to the assessment of premiums. Under the current arrangements, the Safety, Rehabilitation and Compensation Commission (the Commission) prepares a premium estimate for each Department or Commonwealth authority.

This estimate is given to the secretary of the Department (or the principal officer of the authority) who then has 14 days in which to object to the estimate. If the Secretary (or principal officer) objects, the Commission then reviews the estimate and either confirms the estimate or varies it and confirms it as varied.

If the Secretary (or principal officer) still objects to the estimate (or the new estimate as varied by the review) he or she may ask the Minister to review the estimate. The Minister must review the estimate and either confirm the estimate or vary it and confirm it as varied.

It is proposed to make Comcare rather than the Commission, responsible for calculating the premium and to undertake the initial review (where sought). The Commission will supervise the methods used by Comcare to calculate premiums, and the Commission, rather than the Minister, will be the final avenue of appeal.

The word “estimates” will no longer be used in relation to premiums. Instead, the Act will refer to “determinations” of premiums.

Item 7 - Paragraph 69(ea)

29. Item 7 would delete a reference to the Minister in paragraph 69 (ea) of the SRC Act and insert a reference to the Commission so as to provide that it is a function of Comcare to collect on behalf of the Commonwealth any premiums that are payable in accordance with a direction by the Commission under section 96CB.

Item 8 - After paragraph 69(ea)

30. Item 8 proposes to insert a new paragraph 69(eb) in the SRC Act to provide that it is a function of Comcare to determine the amount of premiums that are payable by Departments and Commonwealth authorities.

Item 9 - Section 96

Item 10 - Section 96

31. Items 9 and 10 would amend section 96 of the SRC Act to provide that Comcare must make a determination, in such form as the Commission directs, of the amount of premium which is payable by a Department or Commonwealth authority in a financial year.

Item 11 - Subsection 96A(1)

Item 12 - Subsection 96A(1)

Item 13 - After paragraph 96A(1)(b)

32. These items would amend subsection 96A(1) of the SRC Act to provide that in addition to taking into account the prescribed amount and the penalty amount or bonus amount when determining the amount of the premium of a Department or Commonwealth authority for a financial year, Comcare must have regard to any guidelines issued by the Commission in relation to the determination of premiums.

Item 14 - Subsection 96A(2) (definition of *bonus amount*)

Item 15 - Subsection 96A(2) (paragraph (b) of the definition of *bonus amount*)

Item 16 - Subsection 96A(2) (paragraphs (c) and (d) of the definition of *bonus amount*)

33. Item 14 would replace a reference to the Commission with a reference to Comcare in the subsection 96A(2) definition of *bonus amount*.

34. Item 15 proposes to delete the word "and" at the end of paragraph (b) in the definition of *bonus amount* in subsection 96A(2). This reflects the amendment proposed by item 16.

35. Paragraphs (c) and (d) of the definition of *bonus amount* in subsection 96A(2) of the SRC Act currently provide that in determining the amount (if any) to be deducted from the prescribed amount payable by a Department or authority, regard shall be had to the nature and extent of any rehabilitation programs, and also any occupational health and safety programs provided by the Department or authority for its employees.

36. Item 16 proposes to delete paragraphs (c) and (d). As amended the bonus amount would be determined by regard to the number of claims made by, or in relation to, employees of the Department or authority in the previous financial year, and the amount of compensation paid to, or in relation to, such employees under the Act.

Item 17 - Subsection 96A(2) (definition of *penalty amount*)

Item 18 - Subsection 96A(2) (paragraph (b) of the definition of *penalty amount*)

Item 19 - Subsection 96A(2) (paragraphs (c) and (d) of the definition of *penalty amount*)

37. Item 17 would replace the reference to the Commission with a reference to Comcare in the subsection 96A(2) definition of *penalty amount*.

38. Item 18 would delete the word “and” at the end of paragraph (b) in the definition of *penalty amount* in subsection 96A(2). This reflects the amendment proposed by item 19.

39. Paragraphs (c) and (d) of the definition of *penalty amount* in subsection 96A(2) of the SRC Act currently provide that in determining the amount (if any) to be added to the premium payable by a Department or authority, regard shall be had to the nature and extent of any rehabilitation programs, and also any occupational health and safety programs provided by the Department or authority for its employees.

40. Item 19 proposes to delete paragraphs (c) and (d). As amended the penalty amount would be determined by regard to the number of claims made by, or in relation to, employees of the Department or authority in the previous financial year, and the amount of compensation paid to, or in relation to, such employees under the Act.

Item 20 - Subsection 96A(2) (definition of *Estimated liability*)

Item 21 - Subsection 96A(2) (definition of *Estimated liability*)

41. Item 20 proposes to replace the references to the Commission with references to Comcare in the definition of *estimated liability* in subsection 96A(2) of the SRC Act.

42. Item 21 proposes to delete a reference to the Minister in the definition of *estimated liability* in subsection 96A(2) of the SRC Act and insert a reference to the Commission.

Item 22 - Section 96B

43. Item 22 would amend section 96B to reflect that Comcare also has responsibility for determining the premiums payable by prescribed Commonwealth authorities.

Item 23 - Subsections 96C(2) and (3)

Item 24 - Subsection 96C(3)

44. Subsection 96C of the SRC Act requires Departments and authorities to provide certain information which is used for the purposes of calculating premiums.

45. Items 23 and 24 propose to amend subsections 96(2) and (3) to reflect the fact that in future this information must be provided to Comcare rather than the Commission, to enable Comcare to determine the amount of premium payable by the Department or authority.

Item 25 - After section 96C

46. Item 25 proposes to insert new sections 96CA - Notice of determination, and 96CB - Payment of the premium, in the SRC Act.

47. New section 96CA requires Comcare to give a copy of a determination made in relation to a Department or a Commonwealth authority to the relevant Secretary or principal officer.

48. New section 96CB provides that a determination takes effect 14 days after the day on which the Department or authority received a copy of the determination.

49. New subsection 96CB(2) empowers the Commission to give directions in writing to the Secretary to a Department or principal officer of a Commonwealth authority relating to the payment of the Department's or the authority's premium. New subsection 96CB(4) provides that the Commission's power to give directions includes the power to direct that an amount equal to the premium be paid into, or transferred within, the Consolidated Revenue Fund.

Item 26 - Section 96D

50. Item 26 proposes to repeal section 96D. A new section 96D would provide that the Secretary to a Department, or the principal officer of a Commonwealth authority, to which a determination relates may, by written notice, ask Comcare to review the determination.

51. The notice must be given to Comcare within 14 days after the Department or authority received a copy of the determination, and must set out the grounds of objection.

52. Comcare must review the determination as soon as is practicable after receiving the notice, and decide either to confirm the determination or vary the determination and confirm it as so varied. Proposed new subsection 96D(4) provides that Comcare need not review a determination if satisfied that the notice of objection is trivial, vexatious, misconceived or lacking in substance.

53. Comcare must give written notice to the Secretary to the Department or the principal officer of the Commonwealth authority of the result of the review of the determination, or of Comcare's decision not to review the determination.

54. To avoid doubt, new subsection 96D(6) provides that an objection by a Department or Commonwealth authority does not remove its obligation to pay its premium in accordance with any directions given by the Commission under section 96CB.

Item 27 - Paragraph 96F(1)(a)**Item 28 - Subsection 96F(1)****Item 29 - Subsection 96F(1)****Item 30 - Subsection 96F(1)****Item 31- Subsections 96F(3) and (4)**

55. These items would amend section 96F of the SRC Act.

56. Section 96F currently provides for review by the Minister. As amended, section 96F would provide that if a Department or authority still objects to its determination following a review by Comcare under section 96D of the Act, then the Department or authority may seek a further review by the Commission.

57. New subsection 96F(3) provides that as soon as practicable after receiving notice of the objection, the Commission must review the determination and decide either to confirm the determination or to vary the determination and confirm it as so varied.

58. New subsection 96F(4) provides that the Commission must give written notice of the result of the review to the Secretary to the Department or the principal officer of the authority.

Item 32 - Sections 96FA, 96G and 96H

59. Item 32 would repeal sections 96FA, 96G and 96H and insert new sections 96FA - Review by Commission of Comcare's decision not to review, 96G- Refund of premium, and 96H -Variation of determination.

60. Section 96FA currently provides for confirmation of premium estimates. This is no longer necessary as proposed new section 96CB provides that a determination takes effect 14 days after the day on which the Department or authority received a copy of the determination.

61. New section 96FA provides that if Comcare decides not to review a determination (pursuant to proposed new section 96D), the Secretary to the Department, or the principal officer of the authority to which the determination relates may ask the Commission to review Comcare's decision.

62. The Commission may either confirm Comcare's decision not to review or set aside the decision and direct Comcare to review the determination in accordance with section 96D.

63. Proposed new section 96G provides that if an amount equal to the premium of a Department or authority has been paid into, or transferred within, the Consolidated Revenue Fund, and the amount of the premium is later reduced as a result of a review under section 96D or 96F, then the difference must, as the case requires, be paid out of the Consolidated Revenue Fund, or transferred within that Fund in accordance with the directions of the Commission.

64. Proposed new subsection 96G(3) provides for interest to be paid on the difference, at such rate as is specified by the Minister by notice in the *Gazette*, in respect of each day of the *overpayment period*. However, interest would not be payable if it is less than \$100.

65. Proposed new subsection 96G(4) defines *overpayment period* as the period beginning on the day on which the premium was paid or transferred under section 96DB and ending on the day on which the amount of the difference was paid or transferred under section 96G.

66. New subsection 96H describes the circumstances in which Comcare may vary a determination.

Item 33 - Subsection 97(1)

67. Item 33 is a consequential amendment which reflects the proposal for the Commission and not the Minister to issue directions in relation to the payment of premiums.

Item 34 - Subsections 98(1) and (2)

Item 35 - Subsections 98(1) and (2)

68. Items 34 and 35 are consequential amendments which also reflect the proposal for the Commission and not the Minister to issue directions in relation to the payment of premiums.

Part 3 - Other amendments

Item 36 - At the end of section 89R

69. Section 89R of the SRC Act currently provides that the Commission may, in writing, delegate all or any of its functions and powers to the Chief Executive Officer of Comcare or a member of the Commission.

70. Item 36 proposes to insert new subsections 89R(2) and 89R(3) into the SRC Act. New subsection 89R(2) empowers the Chief Executive Officer to sub-delegate any functions or powers that the Commission delegates to the Chief Executive Officer, to the Deputy Chief Executive Officer or a member of the staff of Comcare.

71. New subsection 89R(3) empowers a member of the Commission to sub-delegate any functions or powers that the Commission delegates to the member, to the Chief Executive Officer, the Deputy Chief Executive Officer or a member of the staff of Comcare.

72. The amendment reflects the fact that many of the functions and powers are purely administrative in nature.

Item 37 - After paragraph 107G(3)(b)**Item 38 - After subsection 107G(3)**

73. Under Part VIIIA of the SRC Act, a Commonwealth authority may apply for a Class 1 licence. A Class 1 licensee is a self-insurer for its workers' compensation liability, however, Comcare continues to manage the authority's claims.

74. At present, Comcare cannot directly charge the Class 1 licence holder for the cost of the claims management services.

75. Items 36 and 37 would amend section 107G of the SRC Act to enable Comcare to enter into a contractual arrangement for the performance of the claims management function.

Item 39 - Section 121

76. Item 39 is a minor amendment which would include declarations under subsection 5(12) of the SRC Act in the instruments which are disallowable for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Item 40 - After Section 124

77. Item 40 would include an additional transitional provision in the SRC Act to reflect an existing administrative arrangement between the Northern Territory and Comcare.

78. New section 124A provides that the Northern Territory shall reimburse Comcare for payments of compensation made by Comcare to persons employed by the Northern Territory government during the period 1 July 1978 to 1 January 1987.

79. New section 124A further provides that the Northern Territory government shall reimburse Comcare for the administrative costs incurred by Comcare in managing claims relating to these employees.

Item 41 - After subsection 131(2)**Item 42 - After subsection 131(3)****Item 43 - Subsections 131(5) and (6) and 132(5)**

80. Sections 131 and 132 of the SRC Act contain transitional arrangements for former employees. Section 131 applies to former employees under 65 who receive superannuation benefits and are unable to work. Section 132 applies to former employees under 65 who do not receive superannuation benefits and are unable to work.

81. Items 41 and 42 would amend subsections 131(2) and (3) to ensure that the benefit paid to these persons does not fall below the level of 70% of indexed normal weekly earnings.

82. Item 43 would correct a technical error in subsections 131(5) and (6) and 132(5).



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