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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Safety, Rehabilitation and Compensation
Amendment (Improving the Comcare
Scheme) Bill 2015**

No. , 2015

(Employment)

***A Bill for an Act to amend the *Safety, Rehabilitation
and Compensation Act 1988*, and for other purposes***

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The day after this Act receives the Royal Assent.	
3. Schedule 2, Part 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
4. Schedule 2, Part 2	The later of: (a) immediately after the commencement of the provisions covered by table item 3; and (b) immediately after the commencement of Schedule 2 to the <i>Safety, Rehabilitation and Compensation Legislation Amendment Act 2015</i> .	
5. Schedule 2, Part 3	The later of: (a) immediately after the commencement of the provisions covered by table item 3; and (b) immediately after the commencement of Part 1 of Schedule 1 to the <i>Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Act 2015</i> .	
6. Schedule 2, Part 4	At the same time as the provisions covered by table item 3.	
7. Schedule 3, Part 1	The day after this Act receives the Royal Assent	
8. Schedule 3,	The later of:	

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
Part 2	(a) immediately after the commencement of the provisions covered by table item 7; and (b) immediately after the commencement of Schedule 2 to the <i>Safety, Rehabilitation and Compensation Legislation Amendment Act 2015</i> .	
9. Schedule 3, Part 3	At the same time as the provisions covered by table item 7.	
10. Schedule 4	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
11. Schedule 5, Part 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
12. Schedule 5, Part 2, Division 1	The day after this Act receives the Royal Assent.	
13. Schedule 5, Part 2, Division 2	At the same time as the provisions covered by table item 11.	
14. Schedule 6, Part 1	The day after this Act receives the Royal Assent.	
15. Schedule 6, Part 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
16. Schedule 7	Immediately after the commencement of the provisions covered by table item 26.	

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
17. Schedule 8	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) the commencement of item 5 of Schedule 1 to the <i>Fair Work Amendment Act 2015</i> .	
18. Schedule 9	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
19. Schedule 10	The day after this Act receives the Royal Assent.	
20. Schedule 11	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
21. Schedule 12	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
22. Schedule 13	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 2 to the <i>Safety, Rehabilitation and Compensation Legislation Amendment Act 2015</i> .	
23. Schedule 14, Part 1	The day after this Act receives the Royal Assent.	

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
24. Schedule 14, Part 2	The later of: (a) immediately after the commencement of the provisions covered by table item 23; and (b) immediately after the commencement of Schedule 2 to the <i>Safety, Rehabilitation and Compensation Legislation Amendment Act 2015</i> .	
25. Schedule 14, Part 3	At the same time as the provisions covered by table item 23.	
26. Schedule 15, Part 1	The day after this Act receives the Royal Assent.	
27. Schedule 15, Part 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
28. Schedule 16	The day after this Act receives the Royal Assent.	
29. Schedule 17, Part 1	The day after this Act receives the Royal Assent.	
30. Schedule 17, Part 2	The later of: (a) immediately after the commencement of the provisions covered by table item 29; and (b) immediately after the commencement of Schedule 2 to the <i>Safety, Rehabilitation and Compensation Legislation Amendment Act 2015</i> .	

1
2
3

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

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

4 **3 Schedules**

5 Legislation that is specified in a Schedule to this Act is amended or
6 repealed as set out in the applicable items in the Schedule
7 concerned, and any other item in a Schedule to this Act has effect
8 according to its terms.

1 **Schedule 1—Eligibility for compensation and**
2 **rehabilitation**

3 **Part 1—Amendments**

4 *Safety, Rehabilitation and Compensation Act 1988*

5 **1 Subsection 4(1)**

6 Insert:

7 *designated injury* has the meaning given by section 5C.

8 *relevant pre-existing ailment*, in relation to a designated injury or
9 an aggravation of a designated injury, has the meaning given by
10 section 5C.

11 **2 Subsection 4(1) (definition of *significant degree*)**

12 Repeal the definition, substitute:

13 *significant degree* means a degree that is substantially more than
14 material.

15 **3 Subsection 4(10)**

16 After “than in”, insert “section 7A or”.

17 **4 Subsection 4(10A)**

18 After “except in”, insert “section 7A or”.

19 **5 Subsection 5A(1) (paragraphs (b) and (c) of the definition of**
20 ***injury*)**

21 After “disease”, insert “or a designated injury”.

22 **6 Subsection 5A(1) (at the end of paragraph (c) of the**
23 **definition of *injury*)**

24 Add “or”.

1 **7 Subsection 5A(1) (after paragraph (c) of the definition of**
2 ***injury*)**

3 Insert:

- 4 (d) a designated injury suffered by an employee, where the
5 designated injury was contributed to, to a significant degree,
6 by the employee's employment by the Commonwealth or a
7 licensee; or
8 (e) a designated injury suffered by an employee, where:
9 (i) the relevant pre-existing ailment is a disease; and
10 (ii) the designated injury was contributed to, to a significant
11 degree, by the relevant pre-existing ailment; or
12 (f) an aggravation of a designated injury suffered by an
13 employee, where the aggravation was contributed to, to a
14 significant degree, by the employee's employment by the
15 Commonwealth or a licensee; or
16 (g) an aggravation of a designated injury suffered by an
17 employee, where:
18 (i) the relevant pre-existing ailment is a disease; and
19 (ii) the aggravation was contributed to, to a significant
20 degree, by the relevant pre-existing ailment;

21 **8 Subsection 5A(1) (definition of *injury*)**

22 Omit all the words after "suffered as a result", substitute:

23 of:

- 24 (h) reasonable management action taken in a reasonable manner;
25 or
26 (i) the employee's anticipation or expectation of reasonable
27 management action being taken.

28 **9 Subsection 5A(2)**

29 Repeal the subsection, substitute:

30 *Management action*

- 31 (2) For the purposes of subsection (1), ***management action*** includes
32 (but is not limited to) the following:
33 (a) an appraisal of the employee's performance;

- 1 (b) a counselling action (whether formal or informal) taken in
2 respect of the employee's employment;
3 (c) a suspension action in respect of the employee's
4 employment;
5 (d) a disciplinary action (whether formal or informal) taken in
6 respect of the employee's employment;
7 (e) anything done in connection with an action mentioned in
8 paragraph (a), (b), (c) or (d);
9 (f) anything done in connection with the employee's failure to
10 obtain a promotion, reclassification, transfer or benefit, or to
11 retain a benefit, in connection with his or her employment;
12 (g) an organisational or corporate restructure;
13 (h) a direction given for an operational purpose or purposes;
14 (i) anything done in connection with an action mentioned in
15 paragraph (g) or (h).

16 *Designated injury—significant degree test*

- 17 (3) For the purposes of paragraphs (1)(d) and (f), in determining
18 whether:
19 (a) a designated injury; or
20 (b) an aggravation of a designated injury;
21 was contributed to, to a significant degree, by an employee's
22 employment by the Commonwealth or a licensee, the following
23 matters may be taken into account:
24 (c) the duration of the employment;
25 (d) the nature of, and particular tasks involved in, the
26 employment;
27 (e) the state of the employee's physical and psychological health
28 before the designated injury or aggravation;
29 (f) any predisposition of the employee to the designated injury
30 or aggravation;
31 (g) the probability that, if the employee had not been employed
32 in the employment:
33 (i) the designated injury or aggravation; or
34 (ii) a similar designated injury or similar aggravation;
35 would have been suffered by the employee:
36 (iii) at or about the same time in the employee's life; or
-

Schedule 1 Eligibility for compensation and rehabilitation

Part 1 Amendments

- 1 (iv) at the same stage of the employee's life;
2 (h) any activities of the employee not related to the employment;
3 (i) if the designated injury or aggravation is, to a significant
4 degree, attributable to the employee's:
5 (i) belief about; or
6 (ii) interpretation of;
7 an incident or state of affairs—whether the employee had
8 reasonable grounds for the belief or interpretation, as the case
9 may be;
10 (j) any other matters affecting the employee's physical or
11 psychological health;
12 (k) any other relevant matters.
13 This subsection does not limit the matters that may be taken into
14 account.

15 **10 After paragraph 5B(2)(b)**

16 Insert:

- 17 (ba) the state of the employee's physical and psychological health
18 before the ailment or aggravation;

19 **11 After paragraph 5B(2)(c)**

20 Insert:

- 21 (ca) the probability that, if the employee had not been employed
22 in the employment:
23 (i) the ailment or aggravation; or
24 (ii) a similar ailment or similar aggravation;
25 would have been suffered by the employee:
26 (iii) at or about the same time in the employee's life; or
27 (iv) at the same stage of the employee's life;

28 **12 After paragraph 5B(2)(d)**

29 Insert:

- 30 (da) if the ailment or aggravation is, to a significant degree,
31 attributable to the employee's:
32 (i) belief about; or
33 (ii) interpretation of;
-

1 an incident or state of affairs—whether the employee had
2 reasonable grounds for the belief or interpretation, as the case
3 may be;

4 **13 Paragraph 5B(2)(e)**

5 Repeal the paragraph, substitute:

- 6 (e) any other matters affecting the employee’s physical or
7 psychological health;
8 (f) any other relevant matters.

9 **14 Subsection 5B(3)**

10 Repeal the subsection, substitute:

11 (3) If:

- 12 (a) a Compensation Standard is in force under section 7A in
13 relation to an ailment; and
14 (b) the Compensation Standard sets out matters that must be
15 taken into account for the purposes of the application of this
16 subsection to the ailment;
17 those matters must be taken into account in determining whether
18 the ailment was contributed to, to a significant degree, by the
19 employee’s employment by the Commonwealth or a licensee.

20 (4) If:

- 21 (a) a Compensation Standard is in force under section 7A in
22 relation to an ailment; and
23 (b) the Compensation Standard sets out matters that must be
24 taken into account for the purposes of the application of this
25 subsection to an aggravation of the ailment;
26 those matters must be taken into account in determining whether an
27 aggravation of the ailment was contributed to, to a significant
28 degree, by the employee’s employment by the Commonwealth or a
29 licensee.

30 (5) Subsections (3) and (4) have effect in addition to subsection (2).

31 **15 After section 5B**

32 Insert:

1 **5C Definition of *designated injury***

2 (1) For the purposes of this Act, *designated injury* means:

- 3 (a) an injury to the heart; or
4 (b) an injury to a blood vessel that is associated with the heart; or
5 (c) an injury to the brain; or
6 (d) an injury to a blood vessel that is associated with the brain; or
7 (e) an injury to an intervertebral disc; or
8 (f) an injury that is associated with an intervertebral disc; or
9 (g) an injury prescribed by the regulations;

10 where:

- 11 (h) the injury is not a disease (within the meaning of section 5B);
12 and
13 (i) the injury consists of, is caused by, results from, or is
14 associated with, a pre-existing ailment.

15 (2) For the purposes of this Act, the *relevant pre-existing ailment* in
16 relation to:

- 17 (a) a designated injury; or
18 (b) an aggravation of a designated injury;
19 is the pre-existing ailment mentioned in paragraph (1)(i).

20 (3) For the purposes of subsection (1), *injury* has its ordinary meaning.

21 **16 After section 7**

22 Insert:

23 **7A Compensation Standards relating to ailments**

24 (1) Comcare may, by legislative instrument, determine a
25 Compensation Standard that:

- 26 (a) relates to a specified ailment; and
27 (b) sets out the factors that must, as a minimum, exist before it
28 can be said that an employee is suffering from the ailment.

29 (2) If a Compensation Standard is in force in relation to an ailment,
30 then, for the purposes of this Act, an employee is taken not to have
31 suffered, or be suffering, from the ailment unless the factors set out

- 1 in the Compensation Standard existed, or exist, as the case
2 requires, for the employee.
- 3 (3) A Compensation Standard relating to an ailment may set out
4 matters that must be taken into account for the purposes of the
5 application of subsection 5B(3) to the ailment.
- 6 (4) A Compensation Standard relating to an ailment may set out
7 matters that must be taken into account for the purposes of the
8 application of subsection 5B(4) to an aggravation of the ailment.

1 **Part 2—Application provisions**

2 **17 Application of amendments**

3 The amendments made by this Schedule apply in relation to an injury
4 sustained by an employee after the commencement of this item.

1 **Schedule 2—Rehabilitation**

2 **Part 1—General amendments**

3 *Military Rehabilitation and Compensation Act 2004*

4 **1 Subsection 41(1) (paragraph (a) of the definition of**
5 ***approved program provider*)**

6 Omit “approved program provider”, substitute “approved workplace
7 rehabilitation provider”.

8 *Safety, Rehabilitation and Compensation Act 1988*

9 **2 Subsection 4(1) (definition of *approved program provider*)**

10 Repeal the definition.

11 **3 Subsection 4(1)**

12 Insert:

13 *approved workplace rehabilitation provider* means a person or
14 body approved under section 34F or 34H as a workplace
15 rehabilitation provider, and includes a person or body so approved
16 whose approval is renewed under section 34L.

17 **4 Subsection 4(1)**

18 Insert:

19 *current employer* of an employee means:

- 20 (a) if the employee is employed in an Entity—the principal
21 officer of the Entity; or
22 (b) if the employee is employed in a Commonwealth authority—
23 the principal officer of the Commonwealth authority; or
24 (c) if the employee is employed by a licensed corporation—the
25 principal officer of the corporation; or
26 (d) if the employee is employed by a corporation (within the
27 meaning of Part VIII) that is not a licensed corporation—the
28 principal executive officer of the corporation.

1 *workplace rehabilitation plan* has the meaning given by
2 section 36.

3 *work readiness assessment* has the meaning given by section 38B.

4 **11 Subparagraph 6(1)(f)(iii)**

5 Repeal the subparagraph, substitute:
6 (iii) fulfilling the employee’s responsibilities under a
7 workplace rehabilitation plan; or

8 **12 Subparagraph 6(1)(f)(v)**

9 Omit “or rehabilitation assessment”.

10 **13 At the end of paragraph 6(1)(f)**

11 Add:
12 (vii) undergoing a work readiness assessment; or

13 **14 Subparagraph 6(1)(g)(iii)**

14 Repeal the subparagraph, substitute:
15 (iii) fulfilling the employee’s responsibilities under a
16 workplace rehabilitation plan; or

17 **15 Subparagraph 6(1)(g)(iv)**

18 Omit “or rehabilitation assessment”.

19 **16 At the end of paragraph 6(1)(g)**

20 Add:
21 (v) undergoing a work readiness assessment; or

22 **17 Paragraph 19(4)(d)**

23 Omit “completed a reasonable rehabilitation or vocational retraining
24 program”, substitute “fulfil the employee’s responsibilities under a
25 workplace rehabilitation plan”.

26 **18 Paragraph 19(4)(f)**

27 Omit “undertake, or to complete, a rehabilitation or vocational
28 retraining program”, substitute “fulfil the employee’s responsibilities
29 under a workplace rehabilitation plan”.

1 **19 Section 34 (definition of *principal*)**

2 Omit “rehabilitation program provider”, substitute “workplace
3 rehabilitation provider”.

4 **20 Division 2 of Part III (heading)**

5 Repeal the heading, substitute:

6 **Division 2—Workplace rehabilitation providers**

7 **21 Subsection 34A(1)**

8 Omit “rehabilitation program provider”, substitute “workplace
9 rehabilitation provider”.

10 **22 Paragraph 34A(2)(b)**

11 Omit “rehabilitation program provider”, substitute “workplace
12 rehabilitation provider”.

13 **23 Subsections 34A(3) to (6)**

14 Omit “rehabilitation program provider”, substitute “workplace
15 rehabilitation provider”.

16 **24 Paragraph 34A(7)(a)**

17 Omit “rehabilitation program provider”, substitute “workplace
18 rehabilitation provider”.

19 **25 Paragraph 34A(7)(b)**

20 Repeal the paragraph, substitute:

21 (b) as an approved workplace rehabilitation provider.

22 **26 Section 34B (heading)**

23 Repeal the heading, substitute:

1 **34B Persons may seek approval as workplace rehabilitation**
2 **providers**

3 **27 Section 34B**

4 Omit “rehabilitation program provider”, substitute “workplace
5 rehabilitation provider”.

6 **28 Subsection 34C(1)**

7 Omit “rehabilitation program provider”, substitute “workplace
8 rehabilitation provider”.

9 **29 Section 34D (heading)**

10 Repeal the heading, substitute:

11 **34D Comcare to establish criteria for approval, or renewal of**
12 **approval, of persons as workplace rehabilitation**
13 **providers**

14 **30 Paragraph 34D(1)(a)**

15 Omit “rehabilitation program providers”, substitute “workplace
16 rehabilitation providers”.

17 **31 Section 34E (heading)**

18 Repeal the heading, substitute:

19 **34E Comcare to establish operational standards for workplace**
20 **rehabilitation providers**

21 **32 Subsection 34E(1)**

22 Omit “rehabilitation program providers”, substitute “workplace
23 rehabilitation providers”.

24 **33 Paragraphs 34E(2)(a) and (b)**

25 Omit “rehabilitation program provider”, substitute “workplace
26 rehabilitation provider”.

1 **34 Subsection 34F(1)**

2 Omit “rehabilitation program provider” (wherever occurring), substitute
3 “workplace rehabilitation provider”.

4 **35 Paragraph 34F(2)(a)**

5 Omit “rehabilitation program provider”, substitute “workplace
6 rehabilitation provider”.

7 **36 Section 34G**

8 Omit “rehabilitation program provider” (wherever occurring), substitute
9 “workplace rehabilitation provider”.

10 **37 Section 34H (heading)**

11 Repeal the heading, substitute:

12 **34H Comcare may also approve persons as workplace rehabilitation**
13 **providers on its own initiative**

14 **38 Subsection 34H(1)**

15 Omit “rehabilitation program provider”, substitute “workplace
16 rehabilitation provider”.

17 **39 Paragraphs 34H(2)(a) and (b)**

18 Omit “rehabilitation program provider”, substitute “workplace
19 rehabilitation provider”.

20 **40 Subsection 34H(5)**

21 Omit “rehabilitation program provider” (wherever occurring), substitute
22 “workplace rehabilitation provider”.

23 **41 Section 34J (heading)**

24 Repeal the heading, substitute:

1 **Division 2A—Liable employers**

2 **35 Liable employer—basic rule**

3 *Liable employer for an injury (other than a disease, a designated*
4 *injury or an aggravation of a designated injury)*

5 (1) For the purposes of this Act, if:

6 (a) an employee has suffered an injury resulting in an incapacity
7 for work or an impairment; and

8 (b) the injury is not a disease, a designated injury or an
9 aggravation of a designated injury;

10 the **liable employer** of the employee in relation to the injury means:

11 (c) if:

12 (i) the employee was employed by an Entity or a
13 Commonwealth authority when the injury occurred; and

14 (ii) the Entity or Commonwealth authority is not an exempt
15 authority;

16 the principal officer of the Entity or the principal officer of
17 the Commonwealth authority, as the case may be; or

18 (d) if the employee was employed by an exempt authority when
19 the injury occurred—Comcare; or

20 (e) if the employee was employed by a licensed authority when
21 the injury occurred—the principal officer of the authority; or

22 (f) if the employee was employed by a licensed corporation
23 when the injury occurred—the principal officer of the
24 corporation.

25 Note: The liable employer has responsibility under this Part for the
26 rehabilitation of the employee.

27 *Liable employer for a disease*

28 (2) For the purposes of this Act, if:

29 (a) an employee has suffered an injury resulting in an incapacity
30 for work or an impairment; and

31 (b) the injury is a disease;

32 the **liable employer** of the employee in relation to the injury means:

33 (c) if:

- 1 (i) the disease was contributed to, to a significant degree,
2 by the employee's employment by an Entity or
3 Commonwealth Authority; and
4 (ii) the Entity or Commonwealth authority is not an exempt
5 authority;
6 the principal officer of the Entity or the principal officer of
7 the Commonwealth authority, as the case may be; or
8 (d) if the disease was contributed to, to a significant degree, by
9 the employee's employment by an exempt authority—
10 Comcare; or
11 (e) if the disease was contributed to, to a significant degree, by
12 the employee's employment by a licensed authority—the
13 principal officer of the authority; or
14 (f) if the disease was contributed to, to a significant degree, by
15 the employee's employment by a licensed corporation—the
16 principal officer of the corporation.

17 Note: The liable employer has responsibility under this Part for the
18 rehabilitation of the employee.

19 *Liable employer for a designated injury*

- 20 (3) For the purposes of this Act, if:
21 (a) an employee has suffered an injury resulting in an incapacity
22 for work or an impairment; and
23 (b) the injury is a designated injury covered by
24 paragraph 5A(1)(d);
25 the **liable employer** of the employee in relation to the injury means:
26 (c) if:
27 (i) the designated injury was contributed to, to a significant
28 degree, by the employee's employment by an Entity or
29 Commonwealth Authority; and
30 (ii) the Entity or Commonwealth authority is not an exempt
31 authority;
32 the principal officer of the Entity or the principal officer of
33 the Commonwealth authority, as the case may be; or
34 (d) if the designated injury was contributed to, to a significant
35 degree, by the employee's employment by an exempt
36 authority—Comcare; or

Schedule 2 Rehabilitation
Part 1 General amendments

- 1 (e) if the designated injury was contributed to, to a significant
2 degree, by the employee's employment by a licensed
3 authority—the principal officer of the authority; or
4 (f) if the designated injury was contributed to, to a significant
5 degree, by the employee's employment by a licensed
6 corporation—the principal officer of the corporation.

7 Note: The liable employer has responsibility under this Part for the
8 rehabilitation of the employee.

9 (4) For the purposes of this Act, if:

- 10 (a) an employee has suffered an injury resulting in an incapacity
11 for work or an impairment; and
12 (b) the injury is a designated injury covered by
13 paragraph 5A(1)(e);

14 the *liable employer* of the employee in relation to the injury means:

- 15 (c) if:
16 (i) the relevant pre-existing ailment was contributed to, to a
17 significant degree, by the employee's employment by an
18 Entity or Commonwealth Authority; and
19 (ii) the Entity or Commonwealth authority is not an exempt
20 authority;

21 the principal officer of the Entity or the principal officer of
22 the Commonwealth authority, as the case may be; or

- 23 (d) if the relevant pre-existing ailment was contributed to, to a
24 significant degree, by the employee's employment by an
25 exempt authority—Comcare; or
26 (e) if the relevant pre-existing ailment was contributed to, to a
27 significant degree, by the employee's employment by a
28 licensed authority—the principal officer of the authority; or
29 (f) if the relevant pre-existing ailment was contributed to, to a
30 significant degree, by the employee's employment by a
31 licensed corporation—the principal officer of the corporation.

32 Note: The liable employer has responsibility under this Part for the
33 rehabilitation of the employee.

34 *Liable employer for an aggravation of a designated injury*

35 (5) For the purposes of this Act, if:

- 1 (a) an employee has suffered an injury resulting in an incapacity
2 for work or an impairment; and
3 (b) the injury is an aggravation of a designated injury covered by
4 paragraph 5A(1)(f);
5 the **liable employer** of the employee in relation to the injury means:
6 (c) if:
7 (i) the aggravation of the designated injury was contributed
8 to, to a significant degree, by the employee's
9 employment by an Entity or Commonwealth Authority;
10 and
11 (ii) the Entity or Commonwealth authority is not an exempt
12 authority;
13 the principal officer of the Entity or the principal officer of
14 the Commonwealth authority, as the case may be; or
15 (d) if the aggravation of the designated injury was contributed to,
16 to a significant degree, by the employee's employment by an
17 exempt authority—Comcare; or
18 (e) if the aggravation of the designated injury was contributed to,
19 to a significant degree, by the employee's employment by a
20 licensed authority—the principal officer of the authority; or
21 (f) if the aggravation of the designated injury was contributed to,
22 to a significant degree, by the employee's employment by a
23 licensed corporation—the principal officer of the corporation.

24 Note: The liable employer has responsibility under this Part for the
25 rehabilitation of the employee.

- 26 (6) For the purposes of this Act, if:
27 (a) an employee has suffered an injury resulting in an incapacity
28 for work or an impairment; and
29 (b) the injury is an aggravation of a designated injury covered by
30 paragraph 5A(1)(g);
31 the **liable employer** of the employee in relation to the injury means:
32 (c) if:
33 (i) the relevant pre-existing ailment was contributed to, to a
34 significant degree, by the employee's employment by an
35 Entity or Commonwealth Authority; and
36 (ii) the Entity or Commonwealth authority is not an exempt
37 authority;

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- 1 the principal officer of the Entity or the principal officer of
2 the Commonwealth authority, as the case may be; or
3 (d) if the relevant pre-existing ailment was contributed to, to a
4 significant degree, by the employee's employment by an
5 exempt authority—Comcare; or
6 (e) if the relevant pre-existing ailment was contributed to, to a
7 significant degree, by the employee's employment by a
8 licensed authority—the principal officer of the authority; or
9 (f) if the relevant pre-existing ailment was contributed to, to a
10 significant degree, by the employee's employment by a
11 licensed corporation—the principal officer of the corporation.

12 Note: The liable employer has responsibility under this Part for the
13 rehabilitation of the employee.

14 *Two or more contributory employments*

- 15 (7) For the purposes of subsections (2), (3), (4), (5) and (6), if:
16 (a) apart from this subsection, there are 2 or more contributory
17 employments for whichever of the following is applicable:
18 (i) the disease;
19 (ii) the designated injury;
20 (iii) the aggravation of the designated injury;
21 (iv) the relevant pre-existing ailment; and
22 (b) one of those contributory employments occurred more
23 recently than the remaining contributory employment or
24 contributory employments;
25 disregard the remaining contributory employment or contributory
26 employments.
- 27 (8) For the purposes of subsection (7), if:
28 (a) the disease; or
29 (b) the designated injury; or
30 (c) the aggravation of the designated injury; or
31 (d) the relevant pre-existing ailment;
32 was contributed to, to a significant degree, by:
33 (e) the employee's employment by an Entity; or
34 (f) the employee's employment by a Commonwealth authority;
35 or

- 1 (g) the employee's employment by a licensed authority; or
2 (h) the employee's employment by a licensed corporation;
3 the employment is a *contributory employment*.

4 *Other matters*

- 5 (8) Subsections (1) to (6) have effect subject to sections 35A, 35B and
6 35C.

7 **35A Liable employer ceases to exist**

8 If:

- 9 (a) an employee has suffered an injury resulting in an incapacity
10 for work or an impairment; and
11 (b) apart from this section, the liable employer of the employee
12 in relation to the injury is the principal officer of a particular
13 Entity or Commonwealth authority; and
14 (c) the Entity or Commonwealth authority is not an exempt
15 authority; and
16 (d) the Entity or Commonwealth authority ceases to exist;

17 then:

- 18 (e) the liable employer of the employee in relation to the injury
19 is:
20 (i) Comcare; or
21 (ii) if another Entity or Commonwealth authority is
22 ascertained in accordance with the regulations—the
23 principal officer of that other Entity or Commonwealth
24 authority; and
25 (f) no other body or person is the liable employer of the
26 employee in relation to the injury.

27 Note: A body or person who becomes the liable employer under this section
28 assumes responsibility under this Part for the rehabilitation of the
29 employee.

30 **35B Liable employer ceases to perform a function**

31 If:

- 32 (a) an employee has suffered an injury resulting in an incapacity
33 for work or an impairment; and
-

- 1 (b) when the injury was sustained, the employee was employed
2 by an Entity or a Commonwealth authority for purposes
3 relating to the performance of a particular function by the
4 Entity or Commonwealth authority; and
5 (c) the Entity or Commonwealth authority is not an exempt
6 authority; and
7 (d) the Entity or Commonwealth authority ceases to perform that
8 function;
9 then:
10 (e) the liable employer of the employee in relation to the injury
11 is:
12 (i) Comcare; or
13 (ii) if another Entity or Commonwealth authority is
14 ascertained in accordance with the regulations—the
15 principal officer of that other Entity or Commonwealth
16 authority; and
17 (f) no other body or person is the liable employer of the
18 employee in relation to the injury.
19 Note: A body or person who becomes the liable employer under this section
20 assumes responsibility under this Part for the rehabilitation of the
21 employee.

35C Deemed liable employer

- 22
23 (1) If an employee has suffered an injury resulting in an incapacity for
24 work or an impairment, Comcare may, by writing, determine that:
25 (a) the liable employer of the employee in relation to the injury
26 is the principal officer of a specified Entity or
27 Commonwealth authority; and
28 (b) no other body or person is the liable employer of the
29 employee in relation to the injury.
30 Note: A body or person who becomes the liable employer under this section
31 assumes responsibility under this Part for the rehabilitation of the
32 employee.
33 (2) If Comcare makes a determination under subsection (1) that relates
34 to an employee, Comcare must give a copy of the determination to
35 the employee.

- 1 (3) A determination under subsection (1) is not a legislative
2 instrument.

3 *Revocation of determination*

- 4 (4) If:
5 (a) an employee has suffered an injury resulting in an incapacity
6 for work or an impairment; and
7 (b) a determination is in force under subsection (1) in relation to
8 the injury;
9 Comcare may, by writing, revoke the determination.
- 10 (5) If, under subsection (4), Comcare revokes a determination that
11 relates to an employee, Comcare must give a copy of the
12 revocation to:
13 (a) the employee; and
14 (b) the person who, after the revocation, is the liable employer of
15 the employee in relation to the injury concerned.

16 **35D Transitional—change of liable employer**

- 17 (1) The regulations may make provision in relation to transitional
18 matters arising out of a change from a former liable employer to a
19 new liable employer that results from the operation of:
20 (a) section 35A; or
21 (b) section 35B; or
22 (c) section 35C.
- 23 (2) Regulations made for the purposes of subsection (1) may:
24 (a) provide that a specified thing done by, or in relation to, the
25 former liable employer before the change has effect, after the
26 change, as if it had been done by, or in relation to, the new
27 liable employer; or
28 (b) provide for the new liable employer to be substituted for the
29 former liable employer as a party in a specified proceeding
30 before a court or tribunal; or
31 (c) provide for specified records or documents to be transferred
32 to the new liable employer; or

1 (d) provide that a reference in a specified instrument to the
2 former liable employer has effect after the change as if the
3 reference were a reference to the new liable employer.

4 (3) Subsection (2) does not limit subsection (1).

5 (4) For the purposes of subsection (2), *instrument* includes:

6 (a) a contract, deed, undertaking or agreement; and

7 (b) a notice, authority, order or instruction; and

8 (c) an instrument made under an Act or under regulations.

9 **35E Delegation by liable employer**

10 (1) A liable employer who is:

11 (a) the principal officer of an Entity; or

12 (b) the principal officer of a Commonwealth authority in respect
13 of which a licence is not in force under Part VIII; or

14 (c) the principal officer of a licensee;

15 may, by writing, delegate to an officer of, or a person employed by,
16 that Entity, authority or licensee any or all of the powers and
17 functions of the liable employer under:

18 (d) this Part; or

19 (e) a workplace rehabilitation plan.

20 (2) In performing functions or exercising powers under a delegation,
21 the delegate must comply with any directions of the liable
22 employer.

23 **35F Deemed delegation by liable employer**

24 *Scope*

25 (1) This section applies if:

26 (a) an employee has suffered an injury resulting in an incapacity
27 for work or an impairment; and

28 (b) Comcare is satisfied that the liable employer of the employee
29 in relation to the injury:

30 (i) has failed to fulfil the liable employer's obligations
31 under this Part in relation to the employee in an
32 adequate or timely manner; or

1 (ii) has, to any extent, contravened the liable employer's
2 obligations under this Part in relation to the employee;
3 and

4 (c) Comcare is not the liable employer.

5 *Delegation*

6 (2) Comcare may, by writing, determine that the liable employer is
7 taken to have delegated to a specified member of the staff of
8 Comcare all of the functions and powers of the liable employer
9 under:

10 (a) sections 36D, 36E, 36F, 36G, 36H and 36J, so far as those
11 functions and powers relate to the employee; and

12 (b) a workplace rehabilitation plan for the employee.

13 (3) Comcare may, by writing, determine that the liable employer is
14 taken to have delegated to a specified member of the staff of
15 Comcare specified functions or powers, or both, of the liable
16 employer under either or both of the following:

17 (a) sections 36D, 36E, 36F, 36G, 36H and 36J, so far as those
18 functions and powers relate to the employee;

19 (b) a workplace rehabilitation plan for the employee.

20 **35G Arrangements for the provision of rehabilitation services**

21 A liable employer may enter into an arrangement with an approved
22 workplace rehabilitation provider for either or both of the
23 following:

24 (a) the provision of rehabilitation services;

25 (b) the carrying out of other activities to assist the liable
26 employer in performing the functions, or exercising the
27 powers, conferred on the liable employer by:

28 (i) this Part; or

29 (ii) a workplace rehabilitation plan.

30 **35H Compensation for acquisition of property**

31 (1) If the operation of:

32 (a) this Division; or

33 (b) regulations made for the purposes of this Division;

1 would result in an acquisition of property (within the meaning of
2 paragraph 51(xxxi) of the Constitution) from a person otherwise
3 than on just terms (within the meaning of that paragraph), the
4 Commonwealth is liable to pay a reasonable amount of
5 compensation to the person.

6 (2) If the Commonwealth and the person do not agree on the amount
7 of the compensation, the person may institute proceedings in a
8 court of competent jurisdiction for the recovery from the
9 Commonwealth of such reasonable amount of compensation as the
10 court determines

11 **Division 2B—Duties of liable employers**

12 **35J Liable employer’s duty to take all reasonably practicable steps** 13 **to ensure rehabilitation of employee**

14 (1) If:
15 (a) an employee suffers an injury resulting in an incapacity for
16 work or an impairment; and
17 (b) the liable employer has been formally notified of the injury;
18 the liable employer must take all reasonably practicable steps to
19 ensure the rehabilitation of the employee.

20 Note: For an employee who does not have the potential to be in suitable
21 employment, the rehabilitation of the employee should be directed
22 towards maximising the employee’s independent functioning.

23 (2) If the liable employer incurs reasonable costs in complying with
24 subsection (1) in relation to the employee, the costs may be
25 reimbursed by the relevant authority.

26 **35K Liable employer’s duty to provide suitable employment etc.**

27 (1) If:
28 (a) an employee suffers an injury resulting in an incapacity for
29 work or an impairment; and
30 (b) the liable employer has been formally notified of the injury;
31 and
32 (c) the employee is not in suitable employment; and
33 (d) the employee has the potential to be in suitable employment;

1 the liable employer must take all reasonably practicable steps to:
2 (e) provide the employee with suitable employment; or
3 (f) assist the employee to find such employment.

4 (2) If:

- 5 (a) an employee suffers an injury resulting in an incapacity for
6 work or an impairment; and
7 (b) the liable employer has been formally notified of the injury;
8 and
9 (c) the employee is in suitable employment;

10 the liable employer must take all reasonably practicable steps to
11 maintain the employee in suitable employment.

12 (3) In performing a duty imposed by subsection (1) or (2), the liable
13 employer must, as far as reasonably practicable, consult:

- 14 (a) the employee concerned; and
15 (b) if the liable employer is aware that the employee is receiving
16 medical treatment for the injury from, or under the
17 supervision of, a legally qualified medical practitioner—that
18 practitioner.

19 (4) If the liable employer consults a medical practitioner under
20 paragraph (3)(b), an amount may be paid to the practitioner, in
21 relation to the consultation, by the relevant authority.

22 (5) If the liable employer consults a medical practitioner under
23 paragraph (3)(b), the medical practitioner may give the liable
24 employer information about the employee that is relevant to the
25 consultation.

26 *Potential to be in suitable employment*

27 (6) For the purposes of subsection (1), the potential of an employee to
28 be in suitable employment is to be ascertained having regard to:

- 29 (a) the potential of the employee to be rehabilitated; and
30 (b) the potential of the employee to benefit from medical
31 treatment; and
32 (c) any other relevant matters.

1 **51 Division 3 of Part III (heading)**

2 Repeal the heading, substitute:

3 **Division 3—Workplace rehabilitation plans**

4 **52 Sections 35, 36 and 37**

5 Repeal the sections, substitute:

6 **36 Workplace rehabilitation plan**

7 (1) For the purposes of this Act, a *workplace rehabilitation plan* for
8 an employee in relation to an injury means a plan that:

- 9 (a) concerns the rehabilitation of the employee; and
10 (b) if:
11 (i) the employee is not in suitable employment; and
12 (ii) the employee has the potential to be in suitable
13 employment;
14 is directed towards returning the employee to suitable
15 employment as soon as practicable; and
16 (c) if the employee is in suitable employment—is directed
17 towards maintaining the employee in suitable employment;
18 and
19 (d) if the employee does not have the potential to be in suitable
20 employment—is directed towards maximising the
21 employee's independent functioning.

22 Note: Workplace rehabilitation plans are formulated by a liable employer
23 under section 36F.

24 (2) A workplace rehabilitation plan may make provision for any or all
25 of the following:

- 26 (a) initial rehabilitation assessment;
27 (b) functional assessment;
28 (c) workplace assessment;
29 (d) job analysis;
30 (e) advice about job modification;
31 (f) occupational rehabilitation counselling;
32 (g) vocational assessment;

- 1 (h) job seeking;
2 (i) training in relation to job seeking;
3 (j) advice or assistance about job seeking;
4 (k) vocational education or training;
5 (l) advice or assistance about arranging vocational education or
6 training;
7 (m) participation in interviews (whether face-to-face or by
8 telephone);
9 (n) advice or assistance about planning for:
10 (i) the return to work of the employee; or
11 (ii) maintaining the employee in work;
12 (o) the provision of aids, appliances, apparatus or other material
13 that is necessary to facilitate:
14 (i) the return to work of the employee; or
15 (ii) maintaining the employee in work;
16 (p) modification of:
17 (i) a work station; or
18 (ii) equipment used by the employee;
19 where the modification is necessary to facilitate:
20 (iii) the return to work of the employee; or
21 (iv) maintaining the employee in work;
22 (q) a service prescribed by the regulations.
- 23 (3) Subsection (2) does not limit subsection (1).
- 24 (4) For the purposes of subsection (1), the potential of the employee to
25 be in suitable employment is to be ascertained having regard to:
26 (a) the potential of the employee to be rehabilitated; and
27 (b) the potential of the employee to benefit from medical
28 treatment; and
29 (c) any other relevant matters.
- 30 *Plan is not a legislative instrument*
- 31 (5) A workplace rehabilitation plan is not a legislative instrument.

- 1 (c) the employee purports to give notice of the alleged injury
2 under section 53; and
3 (d) the relevant authority has not determined a claim for
4 compensation in respect of the alleged injury;
5 then:
6 (e) until the relevant authority determines such a claim, the
7 alleged injury is taken to be an injury; and
8 (f) the notice is taken:
9 (i) to be a notice of the injury; and
10 (ii) to have been given under section 53.

11 **36D Liable employer must consider the need for a workplace**
12 **rehabilitation plan**

13 If:

- 14 (a) an employee suffers an injury resulting in an incapacity for
15 work or an impairment; and
16 (b) there is no workplace rehabilitation plan for the employee in
17 relation to the injury; and
18 (c) the liable employer has been formally notified of the injury;
19 the liable employer must consider:
20 (d) whether there should be a workplace rehabilitation plan for
21 the employee in relation to the injury; and
22 (e) if so, the content of the plan.

23 **36E Employee may request workplace rehabilitation plan**

- 24 (1) If:
25 (a) an employee suffers an injury resulting in an incapacity for
26 work or an impairment; and
27 (b) there is no workplace rehabilitation plan for the employee in
28 relation to the injury; and
29 (c) the liable employer has been formally notified of the injury;
30 the employee may, by written notice given to the liable employer,
31 request the liable employer to formulate a workplace rehabilitation
32 plan for the employee in relation to the injury.

- 1 (2) The liable employer must consider a request made to the liable
2 employer under subsection (1).
- 3 (3) The liable employer must take reasonable steps to ensure that a
4 decision on the request is made within 7 working days after the
5 request was made.

6 **36F Formulation of workplace rehabilitation plan**

- 7 (1) If:
8 (a) an employee suffers an injury resulting in an incapacity for
9 work or an impairment; and
10 (b) the liable employer has been formally notified of the injury;
11 the liable employer may, by writing, formulate a workplace
12 rehabilitation plan for the employee in relation to the injury.
- 13 (2) The liable employer may formulate a workplace rehabilitation plan
14 for an employee even if the employee has not made a request under
15 section 36E.
- 16 (3) If:
17 (a) an employee suffers an injury resulting in an incapacity for
18 work or an impairment; and
19 (b) the liable employer has been formally notified of the injury;
20 the liable employer may decide not to formulate a workplace
21 rehabilitation plan for the employee in relation to the injury.
- 22 (4) If the liable employer decides not to formulate a workplace
23 rehabilitation plan for the employee in relation to the injury, the
24 liable employer must notify the employee in writing of that
25 decision.

26 **36G Variation or revocation of workplace rehabilitation plan**

27 If there is a workplace rehabilitation plan for an employee, the
28 liable employer may, by writing, vary or revoke the plan.

1 **36H Consultation about workplace rehabilitation plan**

- 2 (1) Before a liable employer formulates, varies or revokes a workplace
3 rehabilitation plan for an employee in relation to an injury, the
4 liable employer must, as far as reasonably practicable, consult:
5 (a) the employee; and
6 (b) if the liable employer or provider is aware that the employee
7 is receiving medical treatment for the injury from, or under
8 the supervision of, a legally qualified medical practitioner—
9 that practitioner; and
10 (c) if the liable employer is not the current employer of the
11 employee—the current employer.
- 12 (2) The employee must participate in the consultation under
13 paragraph (1)(a).
- 14 (3) A failure to comply with subsection (2) does not affect the validity
15 of the formulation, variation or revocation, as the case may be, of
16 the workplace rehabilitation plan.
- 17 (4) If the liable employer consults a medical practitioner under
18 paragraph (1)(b), an amount may be paid to the practitioner, in
19 relation to the consultation, by the relevant authority.
- 20 (5) If the liable employer consults a medical practitioner under
21 paragraph (1)(b), the medical practitioner may give the liable
22 employer information about the employee that is relevant to the
23 consultation.
- 24 (6) If the liable employer consults the current employer under
25 paragraph (1)(c), the current employer may give the liable
26 employer information about the employee that is relevant to the
27 consultation.

28 **36J Notification of workplace rehabilitation plan etc.**

- 29 (1) If a liable employer formulates a workplace rehabilitation plan for
30 an employee, the liable employer must:
31 (a) give a copy of the plan to the employee; and

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1 (b) if the employee has responsibilities under the plan—inform
2 the employee that the employee has responsibilities under the
3 plan.

4 (2) If:

5 (a) a liable employer formulates a workplace rehabilitation plan
6 for an employee; and

7 (b) the liable employer is not the current employer of the
8 employee;

9 the liable employer must give a copy of the plan to the current
10 employer.

11 (3) If:

12 (a) a liable employer formulates a workplace rehabilitation plan
13 for an employee; and

14 (b) the liable employer is not the relevant authority;

15 the liable employer must give a copy of the plan to the relevant
16 authority.

17 *Variation or revocation*

18 (4) If a liable employer varies or revokes a workplace rehabilitation
19 plan for an employee, the liable employer must give a copy of the
20 variation or revocation to the employee.

21 (5) If:

22 (a) a liable employer varies or revokes a workplace rehabilitation
23 plan for an employee; and

24 (b) the liable employer is not the current employer of the
25 employee;

26 the liable employer must give a copy of the variation or revocation
27 to the current employer.

28 (6) If:

29 (a) a liable employer varies or revokes a workplace rehabilitation
30 plan for an employee; and

31 (b) the liable employer is not the relevant authority;

32 the liable employer must give a copy of the variation or revocation
33 to the relevant authority.

1 **36K Costs associated with workplace rehabilitation plan**

- 2 (1) If there is a workplace rehabilitation plan for an employee in
3 relation to an injury, the cost of carrying out the plan must be paid
4 by the relevant authority.
- 5 (2) If:
- 6 (a) an employee suffers an injury resulting in an incapacity for
7 work or an impairment; and
- 8 (b) the liable employer has been formally notified of the injury;
9 and
- 10 (c) the liable employer incurs reasonable costs in performing the
11 functions, or exercising the powers, conferred on the liable
12 employer by section 36D, 36E, 36F, 36G, 36H or 36J in
13 relation to the employee;
- 14 the costs may be reimbursed by the relevant authority.

15 **36L Current employer must facilitate workplace rehabilitation plan**

- 16 If:
- 17 (a) there is a workplace rehabilitation plan for an employee in
18 relation to an injury; and
- 19 (b) the liable employer is not the current employer of the
20 employee;
- 21 then:
- 22 (c) the current employer must, as far as reasonably practicable,
23 cooperate with the liable employer in relation to the plan; and
- 24 (d) the current employer must, as far as reasonably practicable,
25 take all reasonable steps to allow the employee to fulfil the
26 employee's responsibilities under the plan.

27 **36M Notification of circumstances that affect employee's ability to**
28 **carry out a job-seeking activity under a workplace**
29 **rehabilitation plan**

- 30 If:
- 31 (a) there is a workplace rehabilitation plan for an employee; and
32 (b) the plan provides that one or more job-seeking activities are
33 to be carried out by the employee under the plan;

- 1 the employee must:
- 2 (c) notify the liable employer, in writing, of any change to the
- 3 employee's circumstances that affects the employee's ability
- 4 to carry out those activities; and
- 5 (d) do so as soon as practicable, and in any event within 3
- 6 working days, after the employee becomes aware of the
- 7 change.

8 **53 Section 38 (heading)**

9 Repeal the heading, substitute:

10 **38 Review of certain determinations**

11 **54 Before subsection 38(1)**

12 Insert:

13 *Review by Comcare*

14 **55 Subsection 38(1)**

15 Omit "rehabilitation authority", substitute "liable employer".

16 **56 Subsection 38(1)**

17 After "relevant authority", insert "or the principal officer of a licensed

18 corporation".

19 **57 Subsection 38(1)**

20 Omit "36 or 37", substitute "36F or 36G".

21 **58 Subsection 38(1)**

22 Omit "authority shall", substitute "liable employer must".

23 **59 Subsection 38(2)**

24 Omit "36 or 37", substitute "36F or 36G".

25 **60 Subsection 38(2)**

26 Omit "rehabilitation authority", substitute "liable employer".

1 **61 Subsection 38(2)**

2 After “relevant authority”, insert “or the principal officer of a licensed
3 corporation”.

4 **62 At the end of section 38**

5 Add:

6 *Review by relevant authority*

7 (5) If:

- 8 (a) the liable employer of an employee in relation to an injury is
9 the principal officer of a licensed corporation; and
10 (b) the liable employer makes a determination under section 36F
11 in relation to the employee;

12 the liable employer must:

- 13 (c) give the employee a written notice setting out:
14 (i) the terms of the determination; and
15 (ii) the reasons for the determination; and
16 (iii) a statement to the effect that the employee may, if
17 dissatisfied with the determination, request the relevant
18 authority for a review of the determination under this
19 section; and
20 (d) do so as soon as practicable after the liable employer makes
21 the determination.

22 (6) If:

- 23 (a) the liable employer of an employee in relation to an injury is
24 the principal officer of a licensed corporation; and
25 (b) the liable employer makes a determination under section 36F
26 in relation to the employee; and
27 (c) the employee has made a claim for compensation in relation
28 to the injury;

29 the employee may, by written notice given to the relevant
30 authority, request the relevant authority to review the
31 determination.

32 (7) A request must:

- 33 (a) set out the reasons for the request; and
34 (b) be given to the relevant authority:
-

- 1 (i) within 30 days after the day on which the determination
2 first came to the notice of the employee; or
3 (ii) within such further period (if any) as the relevant
4 authority, either before or after the expiration of that
5 period, allows.
- 6 (8) After whichever is the later of the following:
7 (a) the receipt of a request to review a section 36F determination
8 in relation to the employee;
9 (b) the determination of the employee's claim for compensation
10 in relation to the injury;
11 the relevant authority:
12 (c) must review the section 36F determination; and
13 (d) may make a decision affirming or revoking the section 36F
14 determination or varying the section 36F determination in
15 such manner as the relevant authority thinks fit.

16 *Definitions*

- 17 (9) In this section:
18 *decision* has the same meaning as in the *Administrative Appeals*
19 *Tribunal Act 1975*.
20 *determination* means a determination, decision or requirement.

21 **63 After section 38**

22 Insert:

23 **38A Exempt authorities**

- 24 (1) The Minister may, by writing, declare that a specified Entity or a
25 specified Commonwealth authority is an exempt authority for the
26 purposes of this Act.
27 (2) A declaration under subsection (1) is not a legislative instrument.

28 **64 Before section 39**

29 Insert:

1 **Division 4—Work readiness assessment**

2 **38B Assessment of capacity to undertake suitable employment**

- 3 (1) If an employee suffers an injury resulting in an incapacity for
4 work, the relevant authority may require the employee to undergo
5 an assessment of the employee's capacity to undertake suitable
6 employment.
- 7 (2) An assessment under subsection (1) is to be known as a *work*
8 *readiness assessment*.
- 9 (3) A work readiness assessment must be made by:
10 (a) a legally qualified medical practitioner nominated by the
11 relevant authority; or
12 (b) a suitably qualified person (other than a legally qualified
13 medical practitioner) nominated by the relevant authority; or
14 (c) a panel comprising of such legally qualified medical
15 practitioners or other suitably qualified persons (or both) as
16 are nominated by the relevant authority.
- 17 (4) The relevant authority may require the employee to undergo an
18 examination by the person or panel of persons making the
19 assessment.
- 20 (5) The examination is taken to be part of the assessment.

21 **38C Report of work readiness assessment**

- 22 (1) If an employee undergoes a work readiness assessment, the person
23 or persons who conducted the assessment must give a report of the
24 assessment to the relevant authority.
- 25 (2) A report of the work readiness assessment must be in accordance
26 with any rules in force under subsection (3).
- 27 (3) Comcare may, by legislative instrument, make rules for the
28 purposes of subsection (2).
- 29 (4) If:
30 (a) an employee undergoes a work readiness assessment in
31 compliance with a requirement of the relevant authority; and
-

- 1 (b) the relevant authority is not the liable employer;
2 the relevant authority may give a copy of a report of the assessment
3 to the liable employer.
- 4 (5) If the liable employer receives a copy of the report of the
5 assessment, the liable employer may use the report for the purposes
6 of the exercise of the powers, or the performance of the functions,
7 of the liable employer under this Part.

8 **38D Cost of carrying out work readiness assessment**

- 9 (1) If a relevant authority requires an employee to undergo a work
10 readiness assessment, the relevant authority is liable to pay:
11 (a) the costs of conducting the assessment; and
12 (b) an amount equal to the amount of the expenditure reasonably
13 incurred by the employee:
14 (i) in making a necessary journey in connection with the
15 assessment; or
16 (ii) in remaining, for the purpose of the assessment, at a
17 place to which the employee has made a journey for that
18 purpose.
- 19 (2) The matters to which the relevant authority is to have regard in
20 deciding questions arising under paragraph (1)(b) include:
21 (a) the means of transport available to the employee for the
22 journey; and
23 (b) the route or routes by which the employee could have
24 travelled; and
25 (c) the accommodation available to the employee.

26 **38E Relevant authority to comply with rules**

- 27 (1) Comcare may, by legislative instrument, make rules to be complied
28 with by relevant authorities in relation to the performance of their
29 functions, or the exercise of their powers, under this Division.
- 30 (2) A relevant authority must comply with any rules in force under
31 subsection (1).

1 **Division 5—Miscellaneous**

2 **65 Paragraph 39(1)(b)**

3 Repeal the paragraph, substitute:

4 (b) either:

5 (i) the employee is fulfilling, or has fulfilled, the
6 employee’s responsibilities under a workplace
7 rehabilitation plan for the employee in relation to the
8 injury; or

9 (ii) the liable employer has refused to formulate a
10 workplace rehabilitation plan for the employee in
11 relation to the injury;

12 **66 Subsection 39(1)**

13 Omit “of the rehabilitation program”, substitute “of the workplace
14 rehabilitation plan”.

15 **67 Sections 40, 41 and 41A**

16 Repeal the sections.

17 **68 At the end of Division 3 of Part III**

18 Add:

19 **41E Liable employers to comply with rules**

20 (1) Comcare may, by legislative instrument, make rules to be complied
21 with by liable employers in relation to the performance of their
22 functions, or the exercise of their powers, under this Part.

23 (2) A liable employer must comply with any rules in force under
24 subsection (1).

25 **69 Part V (heading)**

26 Repeal the heading, substitute:

1 **Part V—Claims for compensation etc.**

2 **70 Subsection 53(1)**

3 After “relevant authority”, insert “or the liable employer”.

4 **71 After subsection 53(2)**

5 Insert:

6 (2A) If:

7 (a) notice under subsection (1) is given to a relevant authority in
8 relation to an employee; and

9 (b) the relevant authority is not the liable employer;

10 the relevant authority:

11 (c) must:

12 (i) inform the liable employer of the contents of the notice;
13 and

14 (ii) do so within 3 working days after receiving the notice;
15 and

16 (d) may give the liable employer information about the employee
17 that is relevant to the injury.

18 (2B) If:

19 (a) notice under subsection (1) is given to the liable employer in
20 relation to an employee; and

21 (b) the liable employer is not the relevant authority;

22 the liable employer:

23 (c) must:

24 (i) inform the relevant authority of the contents of the
25 notice; and

26 (ii) do so within 3 working days after receiving the notice;
27 and

28 (d) may give the relevant authority information about the
29 employee that is relevant to the injury.

30 (2C) If a provisional medical expense payment request is given to a
31 relevant authority by or on behalf of an employee, in relation to an
32 injury suffered by the employee, this Act has effect as if the

1 request were a notice of the injury given to the relevant authority
2 by the employee under subsection (1).

3 **72 At the end of paragraph 53(3)(a)**

4 Add “and”.

5 **73 At the end of section 53**

6 Add:

7 (4) If:

8 (a) a notice purporting to be a notice referred to in subsection (1)
9 has been given to the liable employer; and

10 (b) the notice, as regards the time of giving the notice or
11 otherwise, failed to comply with the requirements of this
12 section; and

13 (c) either:

14 (i) the liable employer would not, by reason of the failure,
15 be prejudiced if the notice were treated as a sufficient
16 notice; or

17 (ii) the failure resulted from the death, or absence from
18 Australia, of a person, from ignorance, from a mistake
19 or from any other reasonable cause;

20 the notice is to be taken to have been given under subsection (1).

21 **74 After subsection 54(4)**

22 Insert:

23 (4A) If:

24 (a) a claim is given to a relevant authority in relation to an
25 employee; and

26 (b) the relevant authority is not the liable employer;
27 the relevant authority:

28 (c) must give a copy of the claim to the liable employer; and

29 (d) may give the liable employer information about the employee
30 that is relevant to the claim.

31 **75 Subsection 57(1)**

32 Repeal the subsection, substitute:

- 1 (1) If:
2 (a) a notice has been given to a relevant authority under
3 section 53 in relation to an employee; or
4 (b) an employee has made a claim for compensation under
5 section 54; or
6 (c) one or more payments of compensation are being made to an
7 employee under this Act by a relevant authority;
8 the relevant authority may require the employee to undergo an
9 examination by:
10 (d) a legally qualified medical practitioner nominated by the
11 relevant authority; or
12 (e) a suitably qualified person (other than a medical practitioner)
13 nominated by the relevant authority; or
14 (f) a panel comprising such legally qualified medical
15 practitioners or other suitably qualified persons (or both) as
16 are nominated by the relevant authority.

17 **76 At the end of section 57**

18 Add:

- 19 (7) The relevant authority may require an employee to undergo an
20 examination under this section in order to assist the liable employer
21 to make a decision about the formulation, variation or revocation
22 of a workplace rehabilitation plan for the employee.
23 (8) Subsection (7) does not limit the circumstances in which the
24 relevant authority may require an examination.

25 **77 After section 57**

26 Insert:

27 **57A Report of medical examination etc.**

- 28 (1) If an employee undergoes a medical examination under section 57
29 in compliance with a requirement by a relevant authority, the
30 person or persons who conducted the examination must give a
31 report of the examination to the relevant authority.
32 (2) If:

- 1 (a) an employee undergoes an examination under section 57 in
2 compliance with a requirement of a relevant authority; and
3 (b) the relevant authority is not the liable employer;
4 the relevant authority may give a copy of a report of the
5 examination to the liable employer.
- 6 (3) If the liable employer receives a copy of the report of the
7 examination, the liable employer may use the report for the
8 purposes of the exercise of the powers, or the performance of the
9 functions, of the liable employer under Part III.

10 **78 Subsection 60(1) (definition of *determination*)**

11 After “means”, insert “(subject to subsections (5), (6) and (7))”.

12 **79 Subsection 60(1) (definition of *determination*)**

13 Omit “36, 37”, substitute “36F, 36G”.

14 **80 Subsection 60(1) (definition of *reviewable decision*)**

15 After “38(4)”, insert “or (8)”.

16 **81 At the end of section 60**

17 Add:

- 18 (5) If a liable employer makes a decision under section 36F to
19 formulate a workplace rehabilitation plan for an employee, that
20 decision is taken not to be a determination for the purposes of this
21 Part to the extent to which the provisions of the plan are authorised
22 by section 36A or 36B.
- 23 (6) If:
- 24 (a) a liable employer makes a decision under section 36G to vary
25 a provision of a workplace rehabilitation plan for an
26 employee; and
27 (b) the varied provision is authorised by section 36A or 36B;
28 that decision is taken not to be a determination for the purposes of
29 this Part.
- 30 (7) If:
- 31 (a) a liable employer makes a decision under section 36G to vary
32 a workplace rehabilitation plan for an employee; and

1 (b) the employee has consented to the variation;
2 that decision is taken not to be a determination for the purposes of
3 this Part.

4 **82 Paragraph 69(b)**

5 Repeal the paragraph.

6 **83 Paragraph 69(f)**

7 Repeal the paragraph, substitute:

8 (f) to take steps directed towards ensuring that each liable
9 employer is complying with the liable employer's obligations
10 under Part III;

11 **84 Before section 71**

12 Insert:

13 **70D Comcare Incentive Scheme for Employers**

14 (1) Comcare may, by legislative instrument, formulate a scheme that
15 authorises Comcare to make payments to employers as an
16 incentive to provide suitable employment for employees who:

- 17 (a) have suffered an injury; and
18 (b) are unemployed; and
19 (c) are seeking paid work.

20 (2) The scheme is to be known as the Comcare Incentive Scheme for
21 Employers.

22 (3) An employer covered by the scheme may be:

- 23 (a) a Commonwealth authority; or
24 (b) an Entity; or
25 (c) a licensed corporation; or
26 (d) any other employer.

27 (4) For the purposes of paragraph 69(ef), a function conferred on
28 Comcare by the scheme is taken to be a function under this Act.

29 **85 Before section 122**

30 Insert:

1 **121C Variation or revocation of instruments**

2 A provision of this Act that deals with the variation or revocation
3 of an instrument does not, by implication, prevent the application
4 of subsection 33(3) of the *Acts Interpretation Act 1901* to another
5 instrument under this Act.

6 ***Seafarers Rehabilitation and Compensation Act 1992***

7 **86 Section 48 (definition of *approved program provider*)**

8 Repeal the definition, substitute:

9 *approved program provider* means an approved workplace
10 rehabilitation provider within the meaning of the *Safety,*
11 *Rehabilitation and Compensation Act 1988.*

1 **Part 2—Amendments contingent on the**
2 **commencement of Schedule 2 to the Safety,**
3 **Rehabilitation and Compensation**
4 **Legislation Amendment Act 2015**

5 *Safety, Rehabilitation and Compensation Act 1988*

6 **87 After subsection 35E(1)**

7 Insert:

8 (1A) If:

- 9 (a) a liable employer is the principal officer of a licensed
10 corporation; and
11 (b) the corporation is covered by a group employer licence;
12 the liable employer may, in writing, delegate to an officer of, or a
13 person employed by, any other corporation covered by the licence
14 all or any of the powers and functions of the liable employer under:
15 (c) this Part; or
16 (d) a workplace rehabilitation plan.

1 **Part 3—Amendments contingent on the**
2 **commencement of Part 1 of Schedule 1 to**
3 **the Safety, Rehabilitation and Compensation**
4 **Legislation Amendment (Exit Arrangements)**
5 **Act 2015**

6 *Safety, Rehabilitation and Compensation Act 1988*

7 **88 Subsection 4(1) (at the end of the definition of *liable***
8 ***employer*)**

9 Add “and sections 41B, 41C and 41D”.

10 **89 At the end of paragraph 35A(d)**

11 Add “and”.

12 **90 After paragraph 35A(d)**

13 Insert:

14 (da) section 41C does not apply to the cessation;

15 **91 After paragraph 35H(1)(a)**

16 Insert:

17 (aa) section 41B; or

18 (ab) section 41C; or

19 (ac) section 41D; or

20 **92 Section 41B**

21 Before “If:” insert “(1)”.

22 **93 Section 41B**

23 Omit “then:”, substitute “the following provisions have effect:”.

24 **94 Paragraphs 41B(d) and (e)**

25 Repeal the paragraphs, substitute:

Schedule 2 Rehabilitation

Part 3 Amendments contingent on the commencement of Part 1 of Schedule 1 to the Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Act 2015

- 1 (d) if the cessation time occurred at or after the commencement
2 of Part 1 of Schedule 2 to the *Safety, Rehabilitation and*
3 *Compensation Amendment (Improving the Comcare Scheme)*
4 *Act 2015*—after the cessation time, the principal officer of
5 the body corporate is the **liable employer** of the employee in
6 relation to the injury;
- 7 (e) if the cessation time occurred:
8 (i) after the commencement of this section; and
9 (ii) before the commencement of Part 1 of Schedule 2 to the
10 *Safety, Rehabilitation and Compensation Amendment*
11 *(Improving the Comcare Scheme) Act 2015*;
12 after the commencement of that Part, the principal officer of
13 the body corporate is the **liable employer** of the employee in
14 relation to the injury.

15 **95 At the end of section 41B**

16 Add:

- 17 (2) For the purposes of this section, the principal officer of a body
18 corporate is the principal executive officer of the body corporate.

19 **96 Subsection 41C(1)**

20 Omit “then:”, substitute “the following provisions have effect:”.

21 **97 Paragraphs 41C(1)(e) and (f)**

22 Repeal the paragraphs, substitute:

- 23 (e) if the cessation time occurred at or after the commencement
24 of Part 1 of Schedule 2 to the *Safety, Rehabilitation and*
25 *Compensation Amendment (Improving the Comcare Scheme)*
26 *Act 2015*—after the cessation time, the principal officer of
27 the successor is the **liable employer** of the employee in
28 relation to the injury;
- 29 (f) if the cessation time occurred:
30 (i) after the commencement of this section; and
31 (ii) before the commencement of Part 1 of Schedule 2 to the
32 *Safety, Rehabilitation and Compensation Amendment*
33 *(Improving the Comcare Scheme) Act 2015*;
-

1 after the commencement of that Part, the principal officer of
2 the successor is the *liable employer* of the employee in
3 relation to the injury.

4 **98 Subsection 41C(2)**

5 Omit “then:”, substitute “the following provisions have effect:”.

6 **99 Paragraphs 41C(2)(f) and (g)**

7 Repeal the paragraphs, substitute:

8 (f) if the cessation time occurred at or after the commencement
9 of Part 1 of Schedule 2 to the *Safety, Rehabilitation and*
10 *Compensation Amendment (Improving the Comcare Scheme)*
11 *Act 2015*—after the cessation time, the principal officer of
12 the successor is the *liable employer* of the employee in
13 relation to the injury;

14 (g) if the cessation time occurred:

15 (i) after the commencement of this section; and

16 (ii) before the commencement of Part 1 of Schedule 2 to the
17 *Safety, Rehabilitation and Compensation Amendment*
18 *(Improving the Comcare Scheme) Act 2015*;

19 after the commencement of that Part, the principal officer of
20 the successor is the *liable employer* of the employee in
21 relation to the injury.

22 **100 At the end of section 41C**

23 Add:

24 (3) For the purposes of this section, the principal officer of a body
25 corporate (other than a Commonwealth authority or a licensed
26 corporation) is the principal executive officer of the body
27 corporate.

28 **101 Section 41D**

29 Omit “then:”, substitute “the following provisions have effect:”.

30 **102 Paragraphs 41D(c) and (d)**

31 Repeal the paragraphs, substitute:

Schedule 2 Rehabilitation

Part 3 Amendments contingent on the commencement of Part 1 of Schedule 1 to the Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Act 2015

- 1 (c) if the cessation time occurred at or after the commencement
2 of Part 1 of Schedule 2 to the *Safety, Rehabilitation and*
3 *Compensation Amendment (Improving the Comcare Scheme)*
4 *Act 2015*—after the cessation time, the principal officer of
5 the Australian Capital Territory is the **liable employer** of the
6 employee in relation to the injury;
- 7 (d) if the cessation time occurred:
- 8 (i) after the commencement of this section; and
- 9 (ii) before the commencement of Part 1 of Schedule 2 to the
10 *Safety, Rehabilitation and Compensation Amendment*
11 *(Improving the Comcare Scheme) Act 2015*;
- 12 after the commencement of that Part, the principal officer of
13 the Australian Capital Territory is the **liable employer** of the
14 employee in relation to the injury.

1 **Part 4—Application and transitional provisions**

2 **103 Application of amendments**

3 The amendments made by Part 1 of this Schedule, so far as they relate
4 to an injury sustained by an employee, apply in relation to an injury
5 sustained before, at or after the commencement of this item.

6 **104 Transitional—formal notification of an injury**

7 If notice of an injury was given, or purportedly given, under section 53
8 of the *Safety, Rehabilitation and Compensation Act 1988* before the
9 commencement of this item, section 36C of that Act (as amended by
10 this Schedule) has effect as if a copy of the notice had been given, or
11 purportedly given, to the liable employer under section 53 of that Act
12 immediately after the commencement of this item.

13 **105 Transitional—rehabilitation programs**

14 (1) This item applies if:

- 15 (a) an employee has suffered an injury resulting in an incapacity
16 for work or an impairment; and
17 (b) before the commencement of this item:
18 (i) a rehabilitation authority made a determination under
19 subsection 37(1) of the *Safety, Rehabilitation and*
20 *Compensation Act 1988* that the employee should
21 undertake a rehabilitation program; and
22 (ii) a rehabilitation program began to be provided for the
23 employee; and
24 (c) the rehabilitation program was in force immediately before
25 the commencement of this item.

26 (2) The rehabilitation program does not lapse because of the repeal of
27 section 37 of that Act by this Schedule, but continues in force after the
28 commencement of this item, as if:

- 29 (a) it were a workplace rehabilitation plan; and
30 (b) that workplace rehabilitation plan had been formulated under
31 section 36F of that Act (as amended by this Schedule); and

1 (c) the requirements of section 36H and subsections 36J(1) and
2 (2) of that Act (as amended by this Schedule) had been met
3 in relation to that workplace rehabilitation plan.

4 (3) That workplace rehabilitation plan may be varied or revoked under
5 section 36G of that Act (as amended by this Schedule).

6 **106 Transitional—approval of a person or body as a**
7 **workplace rehabilitation provider**

8 (1) This item applies to an approval of a person or body as a rehabilitation
9 program provider if the approval was in force under section 34F or 34H
10 of the *Safety, Rehabilitation and Compensation Act 1988* immediately
11 before the commencement of this item.

12 (2) The approval has effect, after the commencement of this item, as if it
13 were an approval of the person or body as a workplace rehabilitation
14 provider under section 34F or 34H, as the case may be, of the *Safety,*
15 *Rehabilitation and Compensation Act 1988* as amended by this
16 Schedule.

17 **107 Transitional—renewal of approval of a person or body as**
18 **a workplace rehabilitation provider**

19 (1) This item applies to the renewal of the approval of a person or body as a
20 rehabilitation program provider if the renewal was in force under
21 section 34L of the *Safety, Rehabilitation and Compensation Act 1988*
22 immediately before the commencement of this item.

23 (2) The renewal has effect, after the commencement of this item, as if it
24 were the renewal of the approval of the person or body as a workplace
25 rehabilitation provider under section 34L of the *Safety, Rehabilitation*
26 *and Compensation Act 1988* as amended by this Schedule.

27 **108 Transitional—exempt authority**

28 (1) This item applies to a declaration of an Entity or a Commonwealth
29 authority as an exempt authority if the declaration was in force under
30 section 35 of the *Safety, Rehabilitation and Compensation Act 1988*
31 immediately before the commencement of this item.

- 1 (2) The declaration has effect, after the commencement of this item, as if it
2 were a declaration of the Entity or Commonwealth authority as an
3 exempt authority under section 38A of the *Safety, Rehabilitation and*
4 *Compensation Act 1988* as amended by this Schedule.

5 **109 Transitional—medical examination**

6 Despite the repeal of subsection 57(1) of the *Safety, Rehabilitation and*
7 *Compensation Act 1988* by this Schedule, that subsection continues to
8 apply, in relation to a requirement given before the commencement of
9 this item, as if the repeal had not happened.

10 **110 Transitional rules**

- 11 (1) The Minister may, by legislative instrument, make rules
12 (*transitional rules*) prescribing matters of a transitional nature
13 (including prescribing any saving or application provisions)
14 relating to the amendments or repeals made by Part 1 of this
15 Schedule.
- 16 (2) To avoid doubt, the transitional rules may not do the following:
17 (a) create an offence or civil penalty;
18 (b) provide powers of:
19 (i) arrest or detention; or
20 (ii) entry, search or seizure;
21 (c) impose a tax;
22 (d) set an amount to be appropriated from the Consolidated
23 Revenue Fund under an appropriation in this Act;
24 (e) amend this Act.

1 **Schedule 3—Scheme integrity**

2 **Part 1—General amendments**

3 *Administrative Decisions (Judicial Review) Act 1977*

4 **1 After paragraph (hf) of Schedule 1**

5 Insert:

6 (hg) decisions under section 70C of the *Safety, Rehabilitation and*
7 *Compensation Act 1988*;

8 *Safety, Rehabilitation and Compensation Act 1988*

9 **2 Subsections 4(10) and (10A)**

10 After “VIII”, insert “or section 114”.

11 **3 After section 50**

12 Insert:

13 **50A Indemnification by third parties**

14 *Scope*

15 (1) This section applies if:

16 (a) compensation is payable under this Act in respect of:

17 (i) an injury to an employee; or

18 (ii) the loss of, or damage to, property used by an employee;
19 and

20 (b) the injury, loss or damage occurred in circumstances that
21 create a legal liability in a person (the *third party*), or in 2 or
22 more persons (the *third parties*), to pay:

23 (i) damages; or

24 (ii) State compensation;

25 to the employee, or a dependant of the employee, in respect
26 of the injury, loss or damage; and

27 (c) the liability has not been discharged; and

28 (d) in the case of a third party—the third party is not:

- 1 (i) the Commonwealth; or
2 (ii) a Commonwealth authority; or
3 (iii) a licensed corporation; or
4 (iv) another employee; and
5 (e) in the case of third parties—none of the third parties is:
6 (i) the Commonwealth; or
7 (ii) a Commonwealth authority; or
8 (iii) a licensed corporation; or
9 (iv) another employee.

10 *Indemnity*

- 11 (2) If the relevant authority has paid compensation under this Act in
12 respect of the injury, loss or damage:
13 (a) the relevant authority is entitled to be indemnified by the
14 third party or third parties; and
15 (b) if subparagraph (1)(b)(i) applies—that indemnity is limited to
16 the lesser of:
17 (i) those damages; or
18 (ii) the amount that would be payable by the employee or
19 the dependant, as the case may be, under section 48 or
20 49 if the damages had been paid to the employee or the
21 dependant, as the case may be; and
22 (c) if subparagraph (1)(b)(ii) applies—that indemnity is limited
23 to the lesser of:
24 (i) the State compensation; or
25 (ii) the amount that would be payable by the employee or
26 the dependant, as the case may be, under section 119 if
27 the State compensation had been paid to the employee
28 or the dependant, as the case may be; and
29 (d) an amount payable under the indemnity may be recovered by
30 the relevant authority, as a debt due to the relevant authority,
31 by action in a court of competent jurisdiction.
- 32 (3) If:
33 (a) a payment is made under the indemnity; and
34 (b) at the time of the payment, the employee or the dependant, as
35 the case may be, has not obtained judgment or an award for:

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- 1 (i) damages; or
2 (ii) State compensation;
3 as the case may be, against the third party or third parties;
4 the payment is, to the extent of the amount of the payment, a
5 discharge of the liability of the third party or third parties to pay:
6 (c) damages; or
7 (d) State compensation;
8 as the case may be, to the employee or the dependant, as the case
9 may be, in respect of the injury, loss or damage.
- 10 (4) If:
11 (a) a payment is made under the indemnity; and
12 (b) at the time of the payment, the employee or the dependant, as
13 the case may be, has obtained judgment or an award for:
14 (i) damages; or
15 (ii) State compensation;
16 as the case may be, against the third party or third parties;
17 and
18 (c) at the time of the payment, the judgment or award has not
19 been satisfied;
20 the payment, to the extent of the amount of the payment, satisfies
21 the judgment or award.
- 22 (5) If:
23 (a) a payment is made under the indemnity; and
24 (b) at the time of the payment, the employee or the dependant, as
25 the case may be, had a liability to Comcare under section 48,
26 49 or 119 in respect of the injury, loss or damage;
27 the payment, to the extent of the amount of the payment, satisfies
28 that liability.
- 29 *Recovery provisions*
- 30 (6) This section has effect subject to sections 48, 49 and 119.
- 31 *Constitutional limits*
- 32 (7) This section has no effect to the extent (if any) to which it imposes
33 taxation.
-

1 (8) This section has no effect to the extent (if any) to which its
2 operation would result in an acquisition of property (within the
3 meaning of paragraph 51(xxxi) of the Constitution) otherwise than
4 on just terms (within the meaning of that paragraph).

5 *Definitions*

6 (9) In this section:

7 *award* means an award, determination, order or agreement by
8 which provision is made for, or in relation to, the grant of any
9 benefits to, or in relation to, persons or their dependants in respect
10 of:

11 (a) injury; or

12 (b) the loss of, or damage to, property;

13 where the award, determination or order was made, or the
14 agreement was entered into, under a specified law (within the
15 meaning of section 119).

16 *State compensation* has the same meaning as in section 119.

17 **4 Section 51**

18 Repeal the section.

19 **5 At the end of section 54**

20 Add:

21 (6) If:

22 (a) an employee gives a claim to the Entity or Commonwealth
23 authority (other than a licensed authority) in which the
24 employee was employed at the time when the relevant injury
25 or accident occurred; and

26 (b) the employee does so on the understanding that the Entity or
27 authority will, on behalf of the employee, give the claim to
28 the relevant authority;

29 the principal officer of the Entity or authority must ensure that the
30 claim is given to the relevant authority within 3 working days after
31 the day on which the claim was received.

1 **6 Section 58**

2 Repeal the section, substitute:

3 **58 Relevant authority may obtain information or documents from**
4 **claimant**

5 (1) If:

- 6 (a) a relevant authority has received a claim; and
7 (b) the relevant authority is satisfied that the claimant:
8 (i) has information or a document that is relevant to the
9 claim; or
10 (ii) may obtain such information or a copy of such a
11 document without unreasonable expense or
12 inconvenience;

13 the relevant authority may, by written notice given to the claimant,
14 require the claimant to:

- 15 (c) give that information or a copy of that document to the
16 relevant authority; and
17 (d) do so within:
18 (i) the period specified in the notice; or
19 (ii) such further period (if any) as the relevant authority, at
20 the request of the claimant, allows.

21 (2) A period specified under subsection (1) must not be shorter than 14
22 days after the notice is given.

23 *Refusal or failure to comply with notice*

24 (3) If a claimant refuses or fails, without reasonable excuse, to comply
25 with a notice under subsection (1), the relevant authority may
26 refuse to deal with the claim until the claimant gives the relevant
27 authority the information, or a copy of the document, specified in
28 the notice.

29 **58A Relevant authority may obtain information or documents from**
30 **third party**

31 (1) If:

- 32 (a) a relevant authority has received a claim; and
-

- 1 (b) the relevant authority is satisfied that a person (other than the
2 claimant):
3 (i) has information or a document that is relevant to the
4 claim; or
5 (ii) may obtain such information or a copy of such a
6 document without unreasonable expense or
7 inconvenience;
8 the relevant authority may, by written notice given to the person,
9 request the person to:
10 (c) give that information or a copy of that document to the
11 relevant authority; and
12 (d) do so within:
13 (i) the period specified in the notice; or
14 (ii) such further period (if any) as the relevant authority, at
15 the request of the person, allows.
- 16 (2) A period specified under subsection (1) must not be shorter than 14
17 days after the notice is given.
- 18 (3) A person may comply with a notice under subsection (1).
- 19 (4) If a person complies with a notice given by a relevant authority
20 under subsection (1), an amount may be paid to the person, in
21 relation to compliance with the notice, by the relevant authority.

22 **7 Subsection 60(1) (at the end of the definition of *reviewable***
23 ***decision*)**

24 Add:

25 Note: See also subsection 64(2).

26 **8 Subsection 61(1A)**

27 Repeal the subsection, substitute:

- 28 (1A) If a claim for compensation under this Act relates to an injury that
29 is not:
30 (a) a disease; or
31 (b) a designated injury; or
32 (c) an aggravation of a designated injury;

1 the determining authority must consider and determine the claim,
2 to the extent that the claim relates to liability under section 14,
3 within the 30-day period that began when the claim was received.

4 (1B) If:

5 (a) a determining authority receives a claim for compensation
6 under this Act; and

7 (b) the claim relates to an injury that is not:

8 (i) a disease; or

9 (ii) a designated injury; or

10 (iii) an aggravation of a designated injury; and

11 (c) the determining authority has not determined the claim, to the
12 extent that the claim relates to liability under section 14,
13 within the 30-day period that began when the claim was
14 received;

15 the determining authority is taken:

16 (d) to have made a determination that compensation is not
17 payable under section 14; and

18 (e) to have done so at the end of that 30-day period.

19 (1C) If a claim for compensation under this Act relates to an injury that
20 is:

21 (a) a disease; or

22 (b) a designated injury; or

23 (c) an aggravation of a designated injury;

24 the determining authority must consider and determine the claim,
25 to the extent that the claim relates to liability under section 14,
26 within the 70-day period that began when the claim was received.

27 (1D) If:

28 (a) a determining authority receives a claim for compensation
29 under this Act; and

30 (b) the claim relates to an injury that is:

31 (i) a disease; or

32 (ii) a designated injury; or

33 (iii) an aggravation of a designated injury; and

34 (c) the determining authority has not determined the claim, to the
35 extent that the claim relates to liability under section 14,

- 1 (c) the agreement has been lodged with the Administrative
2 Appeals Tribunal; and
3 (d) the determination and the decision relate to the same
4 employee; and
5 (e) the determination and the decision are directly or indirectly
6 related to:
7 (i) the same issue; or
8 (ii) the same incident or state of affairs;
9 then:
10 (f) the determination is taken to be a reviewable decision for the
11 purposes of this Part; and
12 (g) an application to the Administrative Appeals Tribunal for
13 review of the reviewable decision is taken to have been
14 made, on the day on which the agreement was lodged with
15 the Administrative Appeals Tribunal, by the person who
16 made the application mentioned in paragraph (a); and
17 (h) the Administrative Appeals Tribunal may deal with those
18 applications together.

19 **12 After section 70B**

20 Insert:

21 **70C Compensation for detriment caused by defective administration**

- 22 (1) Comcare may make payments to persons who:
23 (a) are or were entitled to compensation under this Act; and
24 (b) have suffered a loss as a result of an act or omission of
25 Comcare that:
26 (i) relates to that compensation; and
27 (ii) concerns Comcare's claims management functions or
28 powers.
29 (2) For the purposes of subsection (1), it is immaterial whether the act
30 or omission occurred before, at or after the commencement of this
31 section.

1 *Principles*

2 (3) The Minister may, by legislative instrument, determine principles
3 to be complied with by Comcare in making payments under
4 subsection (1).

5 (4) In making a payment under subsection (1), Comcare must comply
6 with any principles determined under subsection (3).

7 *Annual report*

8 (5) The annual report prepared by the Chief Executive Officer and
9 given to the Minister under section 46 of the *Public Governance,*
10 *Performance and Accountability Act 2013* for a period must
11 include particulars of each payment under subsection (1) of this
12 section during the period.

13 *Interest*

14 (6) Section 26 does not, by implication, limit subsection (1) of this
15 section.

16 **13 Section 71 (heading)**

17 Repeal the heading, substitute:

18 **71 Power to obtain information from Entities, authorities and**
19 **corporations**

20 **14 Subsection 71(1)**

21 Omit “or authority” (wherever occurring), substitute “, authority or
22 corporation”.

23 **15 Section 99**

24 Insert:

25 *worker* has the same meaning as in the *Work Health and Safety Act*
26 *2011*.

27 **16 Paragraph 104(2)(d)**

28 Repeal the paragraph, substitute:

- 1 (d) the applicant has the capacity to meet the standards set by the
2 Commission for the rehabilitation of its employees; and
3 (e) the applicant has the capacity to meet the standards set by the
4 Commission for the work health and safety of workers who
5 carry out work in any capacity for, or for a business or
6 undertaking conducted by, the applicant.

7 **17 Paragraph 104(2A)(a)**

8 Omit “occupational” (wherever occurring), substitute “work”.

9 **18 Paragraph 104(2A)(a)**

10 Omit “the applicant’s employees”, substitute “workers who carry out
11 work in any capacity for, or for a business or undertaking conducted by,
12 the applicant”.

13 **19 At the end of section 104**

14 Add:

- 15 (5) For the purposes of this section, the question of whether a worker
16 carries out work in any capacity for, or for a business or
17 undertaking conducted by, a person is to be determined in the same
18 manner as under the *Work Health and Safety Act 2011*.

19 **20 After subsection 108C(8)**

20 Insert:

21 (8A) If:

- 22 (a) a licensee is authorised to manage claims; and
23 (b) the licensee institutes proceedings in a court or tribunal; and
24 (c) those proceedings relate to:
25 (i) a determination made, or taken to have been made, by
26 the licensee in managing such a claim; or
27 (ii) anything done, or taken to have been done, by the
28 licensee in managing such a claim;

29 then:

- 30 (d) the licensee must, as soon as practicable:
31 (i) inform Comcare that the proceedings have been
32 instituted; and
-

- 1 (ii) inform Comcare of the details of the proceedings; and
2 (e) the court or tribunal in which the proceedings have been
3 instituted must, on application by Comcare, join Comcare as
4 a party to the proceedings.

5 **21 Subsection 108C(9)**

6 Omit “or (8)”, substitute “, (8) or (8A)”.

7 **22 At the end of section 108C**

8 Add:

9 (11) If:

- 10 (a) either:
11 (i) proceedings have been brought against a licensee in
12 accordance with subsection (7); or
13 (ii) proceedings have been instituted by a licensee as
14 mentioned in subsection (8A); and
15 (b) the licensee has a document that is relevant to those
16 proceedings; and
17 (c) Comcare gives the licensee a written notice requiring the
18 licensee to:
19 (i) make a copy of the document and give the copy to
20 Comcare; and
21 (ii) do so within the period specified in the notice;
22 the licensee must comply with the notice.

23 **23 Paragraph 108D(1)(e)**

24 Omit “employees”, substitute “workers”.

25 **24 At the end of section 114**

26 Add:

27 (3) If:

- 28 (a) an amount has been paid by Comcare to an employer under
29 section 23A, 112A or 112B in consequence of:
30 (i) a false or misleading statement or representation; or
31 (ii) a failure or omission to comply with a provision of this
32 Act; or

- 1 (b) an amount that has been paid by Comcare to an employer
2 under section 23A, 112A or 112B should not have been paid;
3 then:
4 (c) the employer must repay the amount to Comcare; and
5 (d) the amount repayable by the employer is recoverable by
6 Comcare from the employer in a court of competent
7 jurisdiction as a debt due to Comcare.
- 8 (4) If:
9 (a) an employer repays an amount to Comcare under
10 subsection (3); and
11 (b) the employer had previously paid an employee a
12 corresponding equal amount in accordance with
13 subsection 112A(4) or 112B(4);
14 then:
15 (c) the employee must repay the corresponding equal amount to
16 the employer; and
17 (d) the amount repayable by the employee is recoverable by the
18 employer from the employee in a court of competent
19 jurisdiction as a debt due to the employer.

20 **25 After section 119**

21 Insert:

22 **119A Notification of change of circumstances**

- 23 (1) If payments of compensation are being made to an employee under
24 this Act by a relevant authority, the employee must:
25 (a) notify the relevant authority, in writing, of any change to the
26 employee's circumstances that affects:
27 (i) the entitlement to that compensation; or
28 (ii) the amount of that compensation; and
29 (b) do so within 14 days after the employee became aware of the
30 change.
- 31 (2) Subsection (1) does not apply to a change of circumstances if,
32 under another provision of this Act, the employee is required to
33 notify the relevant authority of that change.

1 **26 Before section 121A**

2 Insert:

3 **120A Relevant authority may obtain information or documents**
4 **from employee**

5 (1) If:

6 (a) one or more payments of compensation have been, or are
7 being, made to, or for the benefit of, an employee under this
8 Act by a relevant authority; and

9 (b) the relevant authority is satisfied that the employee:

10 (i) has information or a document that is relevant to the
11 compensation; or

12 (ii) may obtain such information or a copy of such a
13 document without unreasonable expense or
14 inconvenience;

15 the relevant authority may, by written notice given to the
16 employee, require the employee to:

17 (c) give that information or a copy of that document to the
18 relevant authority; and

19 (d) do so within:

20 (i) the period specified in the notice; or

21 (ii) such further period (if any) as the relevant authority, at
22 the request of the employee, allows.

23 (2) A period specified under subsection (1) must not be shorter than 14
24 days after the notice is given.

25 **120B Relevant authority may obtain information or documents from**
26 **third party**

27 (1) If:

28 (a) one or more payments of compensation have been, or are
29 being, made to, or for the benefit of, an employee by a
30 relevant authority; and

31 (b) the relevant authority is satisfied that a person (other than the
32 employee):

Schedule 3 Scheme integrity

Part 1 General amendments

- 1 (i) has information or a document that is relevant to the
2 compensation; or
3 (ii) may obtain such information or a copy of such a
4 document without unreasonable expense or
5 inconvenience;
6 the relevant authority may, by written notice given to the person,
7 request the person to:
8 (c) give that information or a copy of that document to the
9 relevant authority; and
10 (d) do so within:
11 (i) the period specified in the notice; or
12 (ii) such further period (if any) as the relevant authority, at
13 the request of the person, allows.
- 14 (2) A period specified under subsection (1) must not be shorter than 14
15 days after the notice is given.
- 16 (3) A person may comply with a notice under subsection (1).
- 17 (4) If the person complies with a notice given by a relevant authority
18 under subsection (1), an amount may be paid to the person, in
19 relation to compliance with the notice, by the relevant authority.

1 **Part 2—Amendments contingent on the**
2 **commencement of Schedule 2 to the Safety,**
3 **Rehabilitation and Compensation**
4 **Legislation Amendment Act 2015**

5 *Safety, Rehabilitation and Compensation Act 1988*

6 **27 Paragraph 107D(4)(e)**

7 Omit “occupational”, substitute “work”.

8 **28 Paragraph 107D(4)(e)**

9 Omit “the corporation’s employees”, substitute “workers who carry out
10 work in any capacity for, or for a business or undertaking conducted by,
11 the corporation”.

12 **29 Subsection 107D(7)**

13 Omit “occupational” (wherever occurring), substitute “work”.

14 **30 Subsection 107D(7)**

15 Omit “the corporation’s employees”, substitute “workers who carry out
16 work in any capacity for, or for a business or undertaking conducted by,
17 the corporation”.

18 **31 At the end of section 107D**

19 Add:

20 *Workers*

21 (11) For the purposes of this section, the question of whether a worker
22 carries out work in any capacity for, or for a business or
23 undertaking conducted by, a person is to be determined in the same
24 manner as under the *Work Health and Safety Act 2011*.

25 **32 Paragraph 108C(8A)(a)**

26 Omit “a licensee”, substitute “the licence holder of a single employer
27 licence”.

1 **33 Paragraphs 108C(8A)(b), (c) and (d)**

2 Omit “the licensee” (wherever occurring), substitute “the licence
3 holder”.

4 **34 Subparagraphs 108C(11)(a)(i) and (ii)**

5 Omit “a licensee”, substitute “the licence holder of a single employer
6 licence”.

7 **35 Paragraphs 108C(11)(b) and (c)**

8 Omit “the licensee” (wherever occurring), substitute “the licence
9 holder”.

10 **36 Subsection 108C(11)**

11 Omit “the licensee must”, substitute “the licence holder must”.

12 **37 After subsection 108CB(4)**

13 Insert:

14 (4A) If:

- 15 (a) a relevant authority for a group employer licence is
16 authorised to manage claims; and
17 (b) the relevant authority institutes proceedings in a court or
18 tribunal; and
19 (c) those proceedings relate to:
20 (i) a determination made, or taken to have been made, by
21 the relevant authority in managing such a claim; or
22 (ii) anything done, or taken to have been done, by the
23 relevant authority in managing such a claim;

24 then:

- 25 (d) the relevant authority must, as soon as practicable:
26 (i) inform Comcare that the proceedings have been
27 instituted; and
28 (ii) inform Comcare of the details of the proceedings; and
29 (e) the court or tribunal in which the proceedings have been
30 instituted must, on application by Comcare, join Comcare as
31 a party to the proceedings.

1 **38 Subsection 108CB(5)**

2 After “(4)”, insert “or (4A)”.

3 **39 At the end of section 108CB**

4 Add:

5 (7) If:

6 (a) either:

7 (i) proceedings have been brought against a relevant
8 authority for a group employer licence in accordance
9 with subsection (3); or

10 (ii) proceedings have been instituted by a relevant authority
11 for a group employer licence as mentioned in
12 subsection (4A); and

13 (b) the relevant authority has a document that is relevant to those
14 proceedings; and

15 (c) Comcare gives the relevant authority a written notice
16 requiring the relevant authority to:

17 (i) make a copy of the document and give the copy to
18 Comcare; and

19 (ii) do so within the period specified in the notice;

20 the relevant authority must comply with the notice.

21 **40 Paragraph 108DA(2)(e)**

22 Omit “employees”, substitute “workers”.

23 **41 Transitional—licences**

24 (1) The amendments of the *Safety, Rehabilitation and Compensation Act*
25 *1988* made by this Part, so far as they concern a decision to:

26 (a) issue a licence under section 107D of that Act; or

27 (b) refuse to issue such a licence;

28 apply in relation to such a decision if the application for the licence
29 concerned was made after the commencement of this item.

30 (2) The amendment of paragraph 108DA(2)(e) of the *Safety, Rehabilitation*
31 *and Compensation Act 1988* made by this Part does not affect the

Schedule 3 Scheme integrity

Part 2 Amendments contingent on the commencement of Schedule 2 to the Safety, Rehabilitation and Compensation Legislation Amendment Act 2015

- 1 continuity of a condition that was covered by that paragraph
2 immediately before the commencement of this item.
- 3 (3) The Commission may vary a licence condition under
4 subsection 108DA(4) of the *Safety, Rehabilitation and Compensation*
5 *Act 1988* in order to ensure that the condition complies with
6 paragraph 108DA(2)(e) of that Act as amended by this Part.

1 **Part 3—General application and transitional**
2 **provisions**

3 **42 Application of amendments**

- 4 (1) Section 50A of the *Safety, Rehabilitation and Compensation Act 1988*
5 (as amended by Part 1 of this Schedule), so far as it concerns an injury,
6 applies in relation to an injury sustained after the commencement of this
7 item.
- 8 (2) Section 50A of the *Safety, Rehabilitation and Compensation Act 1988*
9 (as amended by Part 1 of this Schedule), so far as it concerns the loss of,
10 or damage to, property, applies in relation to loss or damage that
11 occurred after the commencement of this item.
- 12 (3) The amendments made by items 5, 6 and 8 apply in relation to a claim
13 made after the commencement of this item.
- 14 (4) The amendment made by item 9 applies in relation to a determination
15 made after the commencement of this item.
- 16 (5) The amendment made by item 10 applies to a request that was received
17 after the commencement of this item.
- 18 (6) The amendments of the *Safety, Rehabilitation and Compensation Act*
19 *1988* made by Part 1 of this Schedule, so far as they concern a decision
20 to:
21 (a) grant a licence under section 103 of that Act; or
22 (b) refuse to grant such a licence;
23 apply in relation to such a decision if the application for the licence
24 concerned was made after the commencement of this item.
- 25 (7) Subsection 114(3) of the *Safety, Rehabilitation and Compensation Act*
26 *1988* (as amended by Part 1 of this Schedule) applies in relation to an
27 amount paid by Comcare to an employer after the commencement of
28 this item.

1 **43 Transitional—damages**

2 Despite the repeal of section 51 of the *Safety, Rehabilitation and*
3 *Compensation Act 1988* by Part 1 of this Schedule, that section
4 continues to apply, in relation to a notice given before the
5 commencement of this item, as if the repeal had not happened.

6 **44 Transitional—provision of information**

7 Despite the repeal of section 58 of the *Safety, Rehabilitation and*
8 *Compensation Act 1988* by Part 1 of this Schedule, that section
9 continues to apply, in relation to a notice given before the
10 commencement of this item, as if the repeal had not happened.

11 **45 Transitional—licence condition**

12 (1) The amendment of paragraph 108D(1)(e) of the *Safety, Rehabilitation*
13 *and Compensation Act 1988* made by Part 1 of this Schedule does not
14 affect the continuity of a condition that was covered by that paragraph
15 immediately before the commencement of this item.

16 (2) The Commission may vary a licence condition under
17 subsection 108D(2) of the *Safety, Rehabilitation and Compensation Act*
18 *1988* in order to ensure that the condition complies with
19 paragraph 108D(1)(e) of that Act as amended by Part 1 of this
20 Schedule.

1 **Schedule 4—Provisional medical expense**
2 **payments**

3 **Part 1—Amendments**

4 *Safety, Rehabilitation and Compensation Act 1988*

5 **1 Subsection 4(1)**

6 Insert:

7 *alleged injury* in relation to a provisional medical expense
8 payment request under section 52C, has the meaning given by that
9 section.

10 *provisional medical expense payment* means a payment under
11 section 52D.

12 *provisional medical expense payment request* has the meaning
13 given by section 52C.

14 **2 Subsections 4(10) and (10A)**

15 After “Part III,” insert “IVA,”.

16 **3 Subsection 13(1) (definition of *relevant amount*)**

17 After “30(1)”, insert “, 52D(4)”.

18 **4 Before Part V**

19 Insert:

20 **Part IVA—Provisional medical expense payments**
21

22 **52B Simplified outline of this Part**

- 23
- 24
- 25
- An employee who believes on reasonable grounds that he or she has suffered an injury may request the relevant authority to make a provisional medical expense payment to cover the

- 1 cost of one or more items of medical treatment obtained in
2 relation to the injury.
- 3 • A request for a provisional medical expense payment may also
4 be made:
 - 5 (a) by another person on behalf of an employee who is
6 physically or mentally incapable of giving the request
7 himself or herself; or
 - 8 (b) by the legal personal representative of a deceased
9 employee.
 - 10 • A request for a provisional medical expense payment must be
11 made within 40 working days after the injury.
 - 12 • There is an indexed cap for a provisional medical expense
13 payment. The initial cap is \$5,000.

14 **52C Provisional medical expense payment request**

- 15 (1) Any of the following persons:
16 (a) an employee;
17 (b) a person acting on behalf of an employee;
18 (c) the legal personal representative of a deceased employee;
19 may give the relevant authority a written notice that:
20 (d) states that:
 - 21 (i) if the notice is given by an employee—the employee
22 believes on reasonable grounds; or
 - 23 (ii) if the notice is given by a person acting on behalf of an
24 employee—the person believes on reasonable grounds;
25 or
 - 26 (iii) if the notice is given by the legal personal representative
27 of a deceased employee—the legal personal
28 representative believes on reasonable grounds;that the employee has suffered an injury (the *alleged injury*);
29 and
30 (e) requests the relevant authority to make a provisional medical
31 expense payment in respect of the cost of those items of
32 medical treatment; and
33

- 1 (f) states that the employee has consulted a legally qualified
2 medical practitioner about the alleged injury.
- 3 (2) A notice under subsection (1) is to be known as a ***provisional***
4 ***medical expense payment request***.
- 5 (3) A provisional medical expense payment request must:
6 (a) be in the form approved in writing by Comcare for the
7 purposes of this paragraph; and
8 (b) be accompanied by a certificate by a legally qualified
9 medical practitioner in the form approved in writing by
10 Comcare for the purposes of this paragraph.
- 11 (4) A person is not entitled to give a provisional medical expense
12 payment request on behalf of an employee unless the employee is
13 physically or mentally incapable of giving the request himself or
14 herself.
- 15 (5) If:
16 (a) an employee gives a provisional medical expense payment
17 request to the Entity or Commonwealth authority (other than
18 a licensed authority) in which the employee was employed at
19 the time when the alleged injury was sustained; and
20 (b) the employee does so on the understanding that the Entity or
21 authority will, on behalf of the employee, give the
22 provisional medical expense payment request to the relevant
23 authority;
24 the principal officer of the Entity or authority must ensure that the
25 request is given to the relevant authority within 2 working days
26 after the day on which the request was received.
- 27 (6) If a provisional medical expense payment request is given to
28 Comcare after the commencement of Part 1 of Schedule 2 to the
29 *Safety, Rehabilitation and Compensation Amendment (Improving*
30 *the Comcare Scheme) Act 2015*, Comcare must cause a copy of the
31 provisional medical expense payment request to be given to the
32 liable employer of the employee in relation to the alleged injury.
- 33 (7) A provisional medical expense payment request is taken to have
34 been made when it is received by the relevant authority.

Deemed provisional medical expense payment request

(8) If:

(a) any of the following persons:

(i) an employee;

(ii) a person acting on behalf of an employee;

(iii) the legal personal representative of a deceased employee;

has given the relevant authority a provisional medical expense payment request (the *original provisional medical expense payment request*) in respect of one or more items of medical treatment obtained in relation to an alleged injury suffered by the employee; and

(b) the person subsequently gives the relevant authority a written notice requesting the relevant authority to make a provisional medical expense payment in respect of the cost of those other items of medical treatment on the same basis as the original provisional medical expense payment request;

this Act (other than this subsection) and the *Criminal Code* have effect as if:

(c) the notice were another provisional medical expense payment request given by the person to the relevant authority in respect of those other items of medical treatment; and

(d) the other provisional medical expense payment request had complied with the requirements of subsections (1) and (3); and

(e) the person had stated to the relevant authority that those other items of medical treatment were obtained in relation to the alleged injury; and

(f) an amount paid as a result of the other provisional medical expense payment request were an amount paid in relation to the alleged injury.

52D Provisional medical expense payment

(1) If:

(a) a provisional medical expense payment request is made in respect of the cost of one or more items of medical treatment obtained by an employee in relation to an alleged injury; and

1 (b) the provisional medical expense payment request was made
2 within 40 working days after the alleged injury was
3 sustained;
4 the relevant authority is liable to pay, in respect of the cost of those
5 items of medical treatment, an amount of provisional medical
6 expense payment worked out under subsection (2).

7 (2) Subject to subsection (3), the amount is equal to the total amount
8 of compensation that would have been payable under section 16 for
9 the cost of those items of medical treatment if it were assumed that
10 the alleged injury was an injury.

11 (3) If the sum of:

12 (a) the cost of those items of medical treatment obtained in
13 relation to the alleged injury; and

14 (b) any amounts that have previously been paid under this
15 section in relation to:

16 (i) the alleged injury; or

17 (ii) an associated injury;

18 exceeds the cap set out in subsection (4), the amount payable under
19 subsection (1) in respect of the cost of those items of medical
20 treatment is to be reduced by the amount of the excess.

21 Note: For *associated injury*, see section 6B.

22 (4) The cap is \$5,000.

23 Note: For indexation, see section 13.

24 (5) An amount of provisional medical expense payment payable by
25 Comcare under subsection (1) is payable:

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

28 (b) if:

29 (i) the employee dies before the amount is paid and without
30 having paid the cost referred to in subsection (1); and

31 (ii) another person (not being the legal personal
32 representative of the employee) has paid that cost:

33 to that other person; or

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

1 *Exception—claim determined*

2 (9) Subsection (1) does not apply if:

- 3 (a) a claim for compensation under section 16 in respect of the
4 cost of those items of medical treatment has been made by or
5 on behalf of the employee; and
6 (b) the claim is determined within 7 working days after the day
7 on which the provisional medical expense payment request is
8 made.

9 **52E Notice of provisional medical expense payment**

10 If a provisional medical expense payment is payable in respect of
11 the cost of one or more items of medical treatment obtained by an
12 employee, the relevant authority must give the employee, or the
13 legal personal representative of the deceased employee, as the case
14 may be, a written notice that:

- 15 (a) explains the effect of subsection 52D(5); and
16 (b) explains the effect of sections 52F, 52H and 54.

17 **52F Provisional medical expense payment discharges liability to pay**
18 **compensation**

19 If:

- 20 (a) a provisional medical expense payment is made in respect of
21 the cost of one or more items of medical treatment obtained
22 by an employee; and
23 (b) compensation is payable under section 16 in respect of the
24 cost of those items of medical treatment;

25 then:

- 26 (c) the making of the provisional medical expense payment is
27 taken to have discharged so much of the relevant authority's
28 liability to pay the total amount of that compensation as
29 equals the amount of the provisional medical expense
30 payment; and
31 (d) the provisional medical expense payment is not recoverable
32 from the employee or the legal personal representative of the
33 deceased employee, as the case may be.

1 **52G Cost of medical treatment**

2 Subsections 16(2), (3), (3A), (3B) and (3C) apply for the purposes
3 of this Part in the same way as they apply for the purposes of
4 subsection 16(1).

5 **52H Making a provisional medical expense payment does not**
6 **constitute an acceptance of a claim**

7 The making of a provisional medical expense payment does not
8 constitute an acceptance of a claim.

9 **52J Certain documents to be supplied on request**

10 (1) If:

- 11 (a) a provisional medical expense payment request is made in
12 respect of the cost of one or more items of medical treatment
13 obtained by an employee; and
14 (b) the employee asks the relevant authority to give the employee
15 a document held by the authority that relates to the request;
16 the relevant authority must give the document to the employee.

17 (2) If:

- 18 (a) a provisional medical expense payment request is made in
19 respect of the cost of one or more items of medical treatment
20 obtained by an employee who has died; and
21 (b) the legal personal representative of the deceased employee
22 asks the relevant authority to give the legal personal
23 representative a document held by the authority that relates to
24 the request;
25 the relevant authority must give the document to the legal personal
26 representative.

27 (3) If:

- 28 (a) a provisional medical expense payment request is made in
29 respect of the cost of one or more items of medical treatment
30 obtained by an employee; and
31 (b) the request affects the Commonwealth or a Commonwealth
32 authority; and
-

1 (c) the Commonwealth or Commonwealth authority, as the case
2 may be, asks the relevant authority to give the
3 Commonwealth or Commonwealth authority, as the case may
4 be, a document held by the relevant authority that relates to
5 the request;

6 the relevant authority must give the document to the
7 Commonwealth or Commonwealth authority, as the case may be.

8 (4) If:

9 (a) a provisional medical expense payment request is made in
10 respect of the cost of one or more items of medical treatment
11 obtained by an employee; and

12 (b) the request affects a licensed corporation; and

13 (c) the licensed corporation asks the relevant authority to give
14 the licensed corporation a document held by the authority
15 that relates to the request;

16 the relevant authority must give the document to the licensed
17 corporation.

18 **52K Provisional medical expense payment to be treated as**
19 **compensation for certain purposes**

20 A provisional medical expense payment is taken to be
21 compensation for the purposes of sections 48, 50, 50A, 90C, 118
22 and 119.

23 **5 Subsection 97A(2) (at the end of the definition of *bonus***
24 ***amount*)**

25 Add:

26 ; and (c) the number of provisional medical expense payment requests
27 made by, or in relation to, employees of the Entity or
28 authority in each previous financial year; and

29 (d) the amount of provisional medical expense payments paid to
30 such employees under this Act.

31 **6 Subsection 97A(2) (at the end of the definition of *penalty***
32 ***amount*)**

33 Add:

1 **Part 2—Application and transitional provisions**

2 **11 Application of amendments**

3 Part IVA of the *Safety, Rehabilitation and Compensation Act 1988* (as
4 amended by this Schedule) applies to an alleged injury sustained by an
5 employee after the commencement of this item.

6 **12 Transitional—indexation**

7 Section 13 of the *Safety, Rehabilitation and Compensation Act 1988* (as
8 amended by this Schedule) applies in relation to the amount specified in
9 subsection 52D(4) of that Act as if the reference in the definition of
10 **relevant year** in subsection 13(1) of that Act to 1 July 1988 were a
11 reference to 1 July next following the 6-month period that began at the
12 commencement of this item.

1 **Schedule 5—Medical expenses**

2 **Part 1—Amendments**

3 *Safety, Rehabilitation and Compensation Act 1988*

4 **1 Subsection 4(1)**

5 Insert:

6 *accredited healthcare practitioner* has the meaning given by
7 section 71B.

8 *designated medical clinic* has the meaning given by section 54A.

9 *designated medical practitioner* has the meaning given by
10 section 54A.

11 *medical clinic* means a group of 2 or more legally qualified
12 medical practitioners providing services:

13 (a) in the same location or locations; and

14 (b) as, or as part of, the same business or undertaking.

15 *Medical Examination Rates Determination* means the Medical
16 Examination Rates Determination made under section 57B.

17 *medical services table* means the table prescribed under
18 section 16B.

19 **2 Subsection 4(1) (paragraph (b) of the definition of *medical***
20 ***treatment*)**

21 Repeal the paragraph.

22 **3 Subsection 4(1) (paragraph (d) of the definition of *medical***
23 ***treatment*)**

24 Repeal the paragraph, substitute:

25 (d) therapeutic treatment by, or under the supervision of, a
26 registered health practitioner; or

27 (da) therapeutic treatment by, or under the supervision of, an
28 accredited healthcare practitioner; or

1 **4 Subsection 4(1) (paragraph (h) of the definition of *medical***
2 ***treatment*)**

3 Repeal the paragraph, substitute:

- 4 (h) nursing care, whether in a hospital or otherwise; or
5 (ha) treatment and maintenance as a resident in a nursing home;
6 or
7 (hb) the provision of a medicine (other than a schedule 8
8 medicine) that is prescribed by a registered health
9 practitioner, and that is:
10 (i) dispensed by a registered pharmacist; or
11 (ii) provided to an employee while the employee is an
12 in-patient in a hospital; or
13 (iii) provided to an employee while the employee is a
14 resident in a nursing home; or
15 (hc) if an employee has a designated medical practitioner—the
16 provision of a schedule 8 medicine that is prescribed by the
17 practitioner, and that is:
18 (i) dispensed by a registered pharmacist; or
19 (ii) provided to the employee while the employee is an
20 in-patient in a hospital; or
21 (iii) provided to the employee while the employee is a
22 resident in a nursing home; or
23 (hd) if:
24 (i) an employee has a designated medical clinic; and
25 (ii) a legally qualified medical practitioner practices in the
26 clinic;
27 the provision of a schedule 8 medicine that is prescribed by
28 the practitioner, and that is:
29 (iii) dispensed by a registered pharmacist; or
30 (iv) provided to the employee while the employee is an
31 in-patient in a hospital; or
32 (v) provided to the employee while the employee is a
33 resident in a nursing home; or
34 (he) the provision of a medicine that:
35 (i) an employee is directed to take or use by a legally
36 qualified medical practitioner or legally qualified
37 dentist; and

- 1 (ii) is covered by the definition of *registered goods* in the
2 *Therapeutic Goods Act 1989*; and
3 (iii) is provided by a registered pharmacist; or
4 (hf) the provision of medical and surgical supplies and curative
5 apparatus, whether in a hospital or otherwise; or
6 (hg) anything that:
7 (i) is provided to an employee outside Australia; and
8 (ii) approved for the employee under section 115B; or

9 5 Subsection 4(1)

10 Insert:

11 *nursing care* means care provided by a registered nurse.

12 *registered health practitioner* means a person registered under a
13 Health Practitioner Regulation National Law in any of the
14 following health professions (other than as a student):

- 15 (a) Aboriginal and Torres Strait Islander health practice;
16 (b) Chinese medicine;
17 (c) chiropractic;
18 (d) dental (including the profession of a dentist, dental therapist,
19 dental hygienist, dental prosthetist and oral health therapist);
20 (e) medical;
21 (f) medical radiation practice;
22 (g) nursing and midwifery;
23 (h) occupational therapy;
24 (i) optometry;
25 (j) osteopathy;
26 (k) pharmacy;
27 (l) physiotherapy;
28 (m) podiatry;
29 (n) psychology.

30 *registered nurse* means a person registered under a Health
31 Practitioner Regulation National Law in the nursing and midwifery
32 profession as a nurse (other than as a student).

1 **registered pharmacist** means a person registered under a Health
2 Practitioner Regulation National Law in the pharmacy profession
3 (other than as a student).

4 **schedule 8 medicine** means a medicine that includes any
5 ingredient, compound, material or preparation referred to in
6 Schedule 8 to the current Poisons Standard (within the meaning of
7 the *Therapeutic Goods Act 1989*).

8 **6 Subsections 4(10) and (10A)**

9 Before “section 28”, insert “section 16A or section 16B or”.

10 **7 After subsection 16(3)**

11 Insert:

12 (3A) In determining whether it was reasonable for the employee to
13 obtain medical treatment, Comcare must have regard to the
14 following:

15 (a) any relevant Clinical Framework Principles in force under
16 section 16A;

17 (b) such other matters (if any) as Comcare considers relevant.

18 (3B) In determining the amount of compensation appropriate to the
19 medical treatment in the circumstances, Comcare must have regard
20 to the following:

21 (a) the nature of the medical treatment;

22 (b) the necessity for the medical treatment in the circumstances;

23 (c) such other matters (if any) as Comcare considers relevant.

24 (3C) If the medical treatment is covered by an item of the medical
25 services table, the amount of compensation payable by Comcare
26 under subsection (1) in respect of the medical treatment must not
27 exceed the rate specified for the item in the table.

28 **8 At the end of Division 1 of Part II**

29 Add:

1 **16A Clinical Framework Principles**

2 Comcare may, by legislative instrument, formulate Clinical
3 Framework Principles that are to be taken into account under
4 subsection 16(3A).

5 **16B Medical services table**

- 6 (1) Comcare may, by legislative instrument, prescribe a table of
7 medical treatments that sets out the following:
8 (a) items of medical treatment;
9 (b) the rate applicable in respect of each item;
10 (c) rules for interpretation of the table.
11 (2) The table is to be known as the *medical services table*.

12 **9 After section 54**

13 Insert:

14 **54A Designated medical practitioner**

- 15 (1) A claim made by or on behalf of an employee under section 54
16 may:
17 (a) designate a legally qualified medical practitioner to be the
18 employee's *designated medical practitioner* for the purposes
19 of this Act; or
20 (b) designate a medical clinic as the employee's *designated*
21 *medical clinic* for the purposes of this Act.

22 Note: For the provision of a schedule 8 medicine to fall within the definition
23 of *medical treatment*, the medicine must be prescribed by a
24 designated medical practitioner or a medical practitioner who practises
25 in a designated medical clinic. See paragraphs (hc) and (hd) of the
26 definition of *medical treatment* in subsection 4(1).

- 27 (2) If an employee does not have a designated medical practitioner or a
28 designated medical clinic, the employee may, by written notice
29 given to the relevant authority:
30 (a) designate a legally qualified medical practitioner to be the
31 employee's designated medical practitioner for the purposes
32 of this Act; or

- 1 (b) designate a medical clinic to be the employee's designated
2 medical clinic for the purposes of this Act.
- 3 (3) If an employee (or a person acting on behalf of the employee) has
4 previously designated a legally qualified medical practitioner to be
5 the employee's designated medical practitioner, the employee (or a
6 person acting on behalf of the employee) may, by written notice
7 given to the relevant authority:
8 (a) revoke that previous designation; and
9 (b) either:
10 (i) designate another legally qualified medical practitioner
11 to be the employee's designated medical practitioner for
12 the purposes of this Act; or
13 (ii) designate a medical clinic to be the employee's
14 designated medical clinic for the purposes of this Act.
- 15 (4) If an employee (or a person acting on behalf of the employee) has
16 previously designated a medical clinic to be the employee's
17 designated medical clinic, the employee (or a person acting on
18 behalf of the employee) may, by written notice given to the
19 relevant authority:
20 (a) revoke that previous designation; and
21 (b) either:
22 (i) designate another medical clinic to be the employee's
23 designated medical clinic for the purposes of this Act;
24 or
25 (ii) designate a legally qualified medical practitioner to be
26 the employee's designated medical practitioner for the
27 purposes of this Act.
- 28 (5) A previous designation mentioned in subsection (3) or (4) may be a
29 designation made under subsection (1), (2), (3) or (4).
- 30 (6) If a medical clinic has a business name, a designation of a medical
31 clinic may be made using the business name of the clinic.

32 **10 Before subsection 57(6)**

33 Insert:

34 (5A) For the purposes of this section, if:

- 1 (a) an examination is conducted under this section; and
2 (b) apart from this subsection, the cost of conducting the
3 examination exceeds the rate applicable to the examination
4 under the Medical Examination Rates Determination;
5 the cost of conducting the examination is taken to be equal to that
6 rate.

7 **11 Before section 58**

8 Insert:

9 **57B Medical Examination Rates Determination**

10 Comcare may, by legislative instrument, make a Medical
11 Examination Rates Determination that sets out:

- 12 (a) one or more kinds of medical examinations; and
13 (b) the rate applicable in respect of each kind of medical
14 examination.

15 **12 Subsection 60(1) (definition of *determination*)**

16 After “114B(5)(a)”, insert “, under section 115B”.

17 **13 After section 71**

18 Insert:

19 **71A Disclosure of information to disciplinary bodies**

20 *Scope*

- 21 (1) This section applies if Comcare has information relating to medical
22 treatment obtained in relation to an injury suffered by an employee.

23 *Disclosure*

- 24 (2) Comcare may disclose the information to a professional
25 disciplinary authority if Comcare is satisfied that the information
26 will enable or assist the professional disciplinary authority to
27 perform or exercise any of the functions or powers of the authority.
28 (3) Comcare may, by writing, impose conditions to be complied with
29 in relation to information disclosed under subsection (2).
-

- 1 (4) An instrument made under subsection (3) that imposes conditions
2 relating to one particular disclosure identified in the instrument is
3 not a legislative instrument.
- 4 (5) Otherwise, an instrument made under subsection (3) is a legislative
5 instrument.
- 6 (6) For the purposes of this section, *professional disciplinary*
7 *authority* means:
8 (a) the Australian Health Practitioner Regulation Agency; or
9 (b) the Health Care Complaints Commission established by the
10 *Health Care Complaints Act 1993* (NSW); or
11 (c) the Health Ombudsman appointed under the *Health*
12 *Ombudsman Act 2013* (Qld); or
13 (d) an authority that is prescribed by the regulations.
- 14 (7) An authority must not be prescribed by regulations made for the
15 purposes of paragraph (6)(d) unless the authority is responsible for
16 investigating complaints about the professional conduct of:
17 (a) registered health practitioners; or
18 (b) accredited healthcare practitioners; or
19 (c) one or more kinds of registered health practitioner; or
20 (d) one or more kinds of accredited healthcare practitioner.

21 **71B Accredited healthcare practitioners**

- 22 (1) Comcare may, by legislative instrument, declare that each person
23 in a specified class of persons is an accredited healthcare
24 practitioner for the purposes of this Act.
- 25 (2) Subsection (1) of this section does not, by implication, limit the
26 application of subsection 13(3) of the *Legislative Instruments Act*
27 *2003* to another instrument under this Act.

28 **14 Before section 116**

29 Insert:

30 **115A Relevant authority may request medical report**

- 31 (1) If:

- 1 (a) an employee has suffered an injury; and
2 (b) medical treatment has been obtained in relation to the injury;
3 the relevant authority may, by written notice given to the provider
4 of the medical treatment, request the provider to give the relevant
5 authority a written report.

- 6 (2) The relevant authority must pay the cost of a report requested
7 under subsection (1).

8 *Medical Treatment Reports Determination*

- 9 (3) Comcare may, by legislative instrument, make a Medical
10 Treatment Reports Determination that sets out:
11 (a) one or more kinds of reports; and
12 (b) the rate applicable in respect of each kind of report.
- 13 (4) For the purposes of subsection (2), if:
14 (a) a report is given to the relevant authority in response to a
15 request under this section; and
16 (b) apart from this subsection, the cost of the report exceeds the
17 rate applicable to the report under the Medical Treatment
18 Reports Determination;
19 the cost of the report is taken to be equal to that rate.

20 **115B Approval of treatment obtained outside Australia**

- 21 (1) The relevant authority may approve any of the following things
22 obtained by an employee outside Australia:
23 (a) medical or surgical treatment by, or under the supervision of,
24 a medical practitioner;
25 (b) dental treatment by, or under the supervision of, a dentist;
26 (c) therapeutic treatment by, or under the supervision of, a health
27 practitioner;
28 (d) an examination, test or analysis carried out on, or in relation
29 to, an employee at the request or direction of a medical
30 practitioner or dentist and the provision of a report in respect
31 of such an examination, test or analysis;
32 (e) the supply, replacement or repair of an artificial limb or other
33 artificial substitute or of a medical, surgical or other similar
34 aid or appliance;
-

- 1 (f) treatment and maintenance as a patient at a hospital;
2 (g) nursing care, whether in a hospital or otherwise;
3 (h) treatment and maintenance as a resident in a nursing home;
4 (i) the provision of a medicine;
5 (j) the provision of medical and surgical supplies and curative
6 apparatus, whether in a hospital or otherwise;
7 (k) any other form of treatment that is prescribed by the
8 regulations.
- 9 (2) The definition of *nursing care* in subsection 4(1) does not apply to
10 this section.

1 **Part 2—Application and transitional provisions**

2 **Division 1—Transitional provisions commencing on the**
3 **day after Royal Assent**

4 **15 Pre-commencement designations**

5 (1) The powers conferred by subsections 54A(2), (3) and (4) of the *Safety,*
6 *Rehabilitation and Compensation Act 1988* (as amended by this
7 Schedule) may be exercised before the commencement of Part 1 of this
8 Schedule, as if that Part had commenced.

9 (2) A designation made in accordance with subitem (1) takes effect at the
10 commencement of Part 1 of this Schedule.

11 **Division 2—Application provisions commencing on**
12 **Proclamation**

13 **16 Application of amendments**

14 The amendments made by items 1 to 9 apply in relation to medical
15 treatment obtained after the commencement of this item.

1 **Schedule 6—Household services and**
2 **attendant care services**

3 **Part 1—Amendments commencing on the day after**
4 **Royal Assent**

5 *Safety, Rehabilitation and Compensation Act 1988*

6 **1 Subsection 4(1)**

7 Insert:

8 *accredited provider of attendant care services* means a person
9 accredited under regulations made for the purposes of section 29D.

10 *approved provider of attendant care services* means a person
11 approved under regulations made for the purposes of section 29F.

12 *registered provider of attendant care services* means an individual
13 registered by an accredited provider of attendant care services
14 under regulations made for the purposes of section 29E.

15 **2 Subsections 4(10) and (10A)**

16 After “28”, insert “or section 29D”.

17 **3 At the end of Division 5 of Part II**

18 Add:

19 **29D Accredited providers of attendant care services**

- 20 (1) The regulations may empower Comcare to:
21 (a) accredit persons as accredited providers of attendant care
22 services; and
23 (b) revoke such an accreditation.
- 24 (2) The regulations may deal with matters that are ancillary or
25 incidental to the matters mentioned in subsection (1).

1 **29E Registered providers of attendant care services**

- 2 (1) The regulations may empower an accredited provider of attendant
3 care services to:
4 (a) register individuals as registered providers of attendant care
5 services; and
6 (b) revoke such a registration.
- 7 (2) The regulations may deal with matters that are ancillary or
8 incidental to the matters mentioned in subsection (1).

9 **29F Approved attendant care services providers**

- 10 (1) The regulations may empower a relevant authority to:
11 (a) approve a person as an approved provider of attendant care
12 services; and
13 (b) revoke such an approval.
- 14 (2) The regulations may deal with matters that are ancillary or
15 incidental to the matters mentioned in subsection (1).

16 **4 Subsection 60(1) (at the end of the definition of**
17 **determination)**

18 Add “, and includes a decision made under regulations made for the
19 purposes of section 29D, 29E or 29F”.

1 **Part 2—Amendments commencing on Proclamation**

2 **Division 1—Amendments**

3 *Safety, Rehabilitation and Compensation Act 1988*

4 **5 Subsection 4(1)**

5 Insert:

6 *catastrophic injury* has the meaning given by the regulations.

7 *registered occupational therapist* means a person registered under
8 a Health Practitioner Regulation National Law in the occupational
9 therapy profession (other than as a student).

10 *registered physiotherapist* means a person registered under a
11 Health Practitioner Regulation National Law in the physiotherapy
12 profession (other than as a student).

13 **6 Subsection 29 (heading)**

14 Repeal the heading, substitute:

15 **29 Compensation for household services and attendant care services**
16 **obtained as a result of a non-catastrophic injury**

17 **7 Subsection 29(1)**

18 Omit “subsection (5)”, substitute “subsections (5) and (5A)”.

19 **8 Subsection 29(1)**

20 After “an employee”, insert “(other than a catastrophic injury)”.

21 **9 Subsections 29(1) and (2)**

22 Omit “Comcare” (wherever occurring), substitute “the relevant
23 authority”.

24 **10 After paragraph 29(2)(a)**

25 Insert:

1 (aa) any section 29B assessment relating to the employee's need
2 for household services as the result of the employee's injury;

3 **11 Subsection 29(3)**

4 Repeal the subsection, substitute:

5 (3) Subject to subsections (5) and (5A), if:

6 (a) an employee obtains attendant care services as a result of an
7 injury to the employee (other than a catastrophic injury); and

8 (b) the attendant care services are provided by:

9 (i) an accredited provider of attendant care services; or

10 (ii) a registered provider of attendant care services; or

11 (iii) an approved provider of attendant care services; or

12 (iv) an individual authorised by the relevant authority in
13 relation to the employee; and

14 (c) the attendant care services obtained are reasonably required
15 by the employee;

16 the relevant authority is liable to pay compensation of:

17 (d) \$442.20 per week; or

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

20 whichever is the less.

21 (3A) The relevant authority must not authorise an individual under
22 subparagraph (3)(b)(iv) unless the relevant authority is satisfied
23 that there are special circumstances.

24 **12 Subsection 29(4)**

25 Omit "Comcare" (wherever occurring), substitute "the relevant
26 authority".

27 **13 After paragraph 29(4)(e)**

28 Insert:

29 (ea) any section 29B assessment relating to the employee's need
30 for attendant care services as the result of the employee's
31 injury;

1 **14 Subsection 29(5)**

2 Repeal the subsection, substitute:

3 (5) If the injury was sustained at or after the commencement of this
4 subsection, the relevant authority is not liable to pay compensation
5 under subsection (1) or (3) in respect of a week unless the week
6 occurs:

7 (a) during the 3-year period beginning on the date of the injury;

8 or

9 (b) if:

10 (i) the employee is admitted to hospital as an in-patient for
11 treatment in relation to the injury; and

12 (ii) the employee is discharged from hospital after the
13 30-month period beginning on the date of the injury;
14 during the 6-month period beginning on the day the
15 employee is discharged from hospital.

16 (5A) If the injury was sustained before the commencement of this
17 subsection, the relevant authority is not liable to pay compensation
18 under subsection (1) or (3) in respect of a week unless the week
19 occurs:

20 (a) during the 3-year period beginning at the commencement of
21 this subsection; or

22 (b) if:

23 (i) the employee is admitted to hospital as an in-patient for
24 treatment in relation to the injury; and

25 (ii) the employee is discharged from hospital after the
26 30-month period beginning at the commencement of
27 this subsection;

28 during the 6-month period beginning on the day the
29 employee is discharged from hospital.

30 **15 Subsections 29(6) and (7)**

31 Omit “Comcare”, substitute “the relevant authority”.

32 **16 After section 29**

33 Insert:

1 **29A Compensation for household services and attendant care**
2 **services obtained as a result of a catastrophic injury**

3 *Household services*

4 (1) If:

- 5 (a) an employee obtains household services as a result of a
6 catastrophic injury to the employee; and
7 (b) the household services are reasonably required by the
8 employee; and
9 (c) the employee has undergone a section 29B assessment
10 relating to the employee's need for household services as the
11 result of the employee's catastrophic injury;

12 the relevant authority is liable to pay compensation of such amount
13 per week as the relevant authority considers reasonable in the
14 circumstances.

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

- 20 (a) the extent to which household services were provided by the
21 employee before the date of the catastrophic injury and the
22 extent to which he or she is able to provide those services
23 after that date;
24 (b) any section 29B assessment relating to the employee's need
25 for household services as the result of the employee's
26 catastrophic injury;
27 (c) the number of persons living with the employee as members
28 of his or her household, their ages and their need for
29 household services;
30 (d) the extent to which household services were provided by the
31 persons referred to in paragraph (c) before the catastrophic
32 injury;
33 (e) the extent to which the persons referred to in paragraph (c),
34 or any other members of the employee's family, might
35 reasonably be expected to provide household services for
36 themselves and for the employee after the catastrophic injury;

1 (f) the need to avoid substantial disruption to the employment or
2 other activities of the persons referred to in paragraph (c).

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

4 *Attendant care services*

5 (3) If:

6 (a) an employee obtains attendant care services as a result of a
7 catastrophic injury to the employee; and

8 (b) the attendant care services are provided by:

9 (i) an accredited provider of attendant care services; or

10 (ii) a registered provider of attendant care services; or

11 (iii) an approved provider of attendant care services; or

12 (iv) an individual authorised by the relevant authority in
13 relation to the employee; and

14 (c) the attendant care services obtained are reasonably required
15 by the employee; and

16 (d) the employee has undergone a section 29B assessment
17 relating to the employee's need for attendant care services as
18 the result of the employee's catastrophic injury;

19 the relevant authority is liable to pay compensation of such amount
20 per week as the relevant authority considers reasonable in the
21 circumstances.

22 (4) The relevant authority must not authorise an individual under
23 subparagraph (3)(b)(iv) unless the relevant authority is satisfied
24 that there are special circumstances.

25 (5) Without limiting the matters that the relevant authority may take
26 into account in determining the attendant care services that are
27 reasonably required in a particular case, the relevant authority
28 must, in making such a determination, have regard to the following
29 matters:

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

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

- 1 (c) the extent to which it is reasonable to meet any wish by the
2 employee to live outside an institution;
3 (d) the extent to which attendant care services are necessary to
4 enable the employee to undertake or continue employment;
5 (e) any assessment made in relation to the rehabilitation of the
6 employee;
7 (f) the extent to which a relative of the employee might
8 reasonably be expected to provide attendant care services;
9 (g) any section 29B assessment relating to the employee's need
10 for attendant care services as the result of the employee's
11 catastrophic injury.

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

- 13 (6) An amount of compensation payable by the relevant authority
14 under subsection (1) or (3) is payable:
15 (a) if the employee has paid for the household services or
16 attendant care services, as the case may be—to the employee;
17 or
18 (b) in any other case—to the person who provided those
19 services.
- 20 (7) If the relevant authority pays an amount under subsection (1) or (3)
21 to a person who provided household services or attendant care
22 services to an employee, the payment of the amount is, to the
23 extent of the payment, a discharge of the liability of the employee
24 to pay for those services.

25 **29B Assessment of need for household services and attendant care**
26 **services**

- 27 (1) The relevant authority may require an injured employee to undergo
28 an assessment by:
29 (a) a registered occupational therapist nominated by the relevant
30 authority; or
31 (b) a registered physiotherapist nominated by the relevant
32 authority;
33 of the employee's need for either or both of the following:
34 (c) household services;
35 (d) attendant care services.

- 1 (2) The relevant authority is liable to pay:
2 (a) the costs of conducting an assessment under subsection (1);
3 and
4 (b) an amount equal to the amount of the expenditure reasonably
5 incurred by the employee:
6 (i) in making a necessary journey in connection with the
7 assessment; or
8 (ii) in remaining, for the purpose of the assessment, at a
9 place to which the person has made a journey for that
10 purpose.
- 11 (3) The matters to which the relevant authority is to have regard in
12 deciding questions arising under paragraph (2)(b) include:
13 (a) the means of transport available to the person for the journey;
14 and
15 (b) the route or routes by which the person could have travelled;
16 and
17 (c) the accommodation available to the person.

18 **29C Reimbursement of costs incurred in relation to accompanying**
19 **an employee**

- 20 (1) If:
21 (a) during a particular week, an employee obtains attendant care
22 services as a result of a catastrophic injury to the employee;
23 and
24 (b) compensation is payable under section 29A for those
25 attendant care services; and
26 (c) the attendant care services are provided by an individual; and
27 (d) during the week, the individual accompanies the employee to
28 enable the employee to undertake an activity outside the
29 employee's place of residence; and
30 (e) having regard to:
31 (i) the well-being of the employee; and
32 (ii) the independent functioning of the employee; and
33 (iii) the rehabilitation of the employee; and
34 (iv) any other relevant matters;

1 it is reasonable and appropriate for the employee to undertake
2 the activity; and

3 (f) the employee or individual incurs reasonable costs in relation
4 to the individual so accompanying the employee;

5 the costs may be reimbursed by the relevant authority.

6 (2) The following are examples of costs covered by paragraph (1)(f):

7 (a) the cost of travel;

8 (b) the cost of accommodation;

9 (c) the cost of meals;

10 (d) the cost of tickets;

11 (e) incidental costs.

12 **17 Subsection 60(1) (definition of *determination*)**

13 After “29,” insert “29A,”.

14 **Division 2—Application and transitional provisions**

15 **18 Application of amendments**

16 (1) The amendments made by items 6, 8, 9, 10, 11, 12, 13, 14 and 15 apply
17 in relation to compensation in respect of a week beginning after the
18 commencement of this item.

19 (2) Section 29A of the *Safety, Rehabilitation and Compensation Act 1988*
20 (as amended by this Schedule) applies in relation to compensation in
21 respect of a week that begins after the commencement of this item.

22 **19 Transitional—indexation**

23 Section 13 of the *Safety, Rehabilitation and Compensation Act 1988*
24 applies in relation to the amount specified in subsection 29(3) of that
25 Act (as amended by this Schedule) as if the reference in the definition
26 of *relevant year* in subsection 13(1) of that Act to 1 July 1988 were a
27 reference to 1 July next following the 6-month period that began at the
28 commencement of this item.

1 **Schedule 7—Absences from Australia**

2 Note: This Schedule amends Division 5A of Part II of the *Safety, Rehabilitation and*
3 *Compensation Act 1988*. That Division is inserted by Part 1 of Schedule 15 to this Act.

4 **Part 1—Amendments**

5 ***Safety, Rehabilitation and Compensation Act 1988***

6 **1 At the end of Division 5A of Part II**

7 Add:

8 **29K Extended absences from Australia**

9 *Basic rule*

10 (1) If:

- 11 (a) an employee leaves Australia; and
12 (b) the employee is absent from Australia for private purposes
13 for a period of more than 6 weeks beginning when the
14 employee leaves Australia;

15 the employee's compensation rights are suspended during the
16 period that:

17 (c) begins at:

- 18 (i) if the employee was in Australia for a period of at least
19 6 weeks ending when the employee leaves Australia—
20 the end of the first 6 weeks of the period mentioned in
21 paragraph (b); or
22 (ii) if the employee was in Australia for a period of less
23 than 6 weeks ending when the employee leaves
24 Australia—the time when the employee leaves
25 Australia; or
26 (iii) if, under subsection (9) or (10), the relevant authority
27 has approved the extension of the employee's absence
28 to a later time—that later time; and

29 (d) ends when:

- 30 (i) the employee returns to Australia; or
31 (ii) the employee's absence for private purposes becomes an
32 absence for work purposes;
-

1 *Transitional*

2 (5) If:

- 3 (a) at the commencement of this section, an employee was
4 absent from Australia for private purposes; and
5 (b) the employee is absent from Australia for private purposes
6 for a period of more than 6 weeks beginning at the
7 commencement of this section;

8 the employee's compensation rights are suspended during the
9 period that:

10 (c) begins at:

- 11 (i) the end of the first 6 weeks of the period mentioned in
12 paragraph (b); or
13 (ii) if, under subsection (9) or (10), the relevant authority
14 has approved the extension of the employee's absence
15 to a later time—that later time; and

16 (d) ends when:

- 17 (i) the employee returns to Australia; or
18 (ii) the employee's absence for private purposes becomes an
19 absence for work purposes;
20 whichever first happens.

21 (6) However, subsection (5) does not apply if:

- 22 (a) the employee returns to Australia for a period of less than 6
23 weeks; and
24 (b) when the employee began to be absent from Australia at the
25 end of that period, that absence was for work purposes.

26 *Absence for work purposes*

27 (7) For the purposes of this section, an employee is absent from
28 Australia for **work purposes** if, and only if:

- 29 (a) the employee is absent from Australia; and
30 (b) the employee is in suitable employment; and
31 (c) the suitable employment is the sole or dominant purpose of
32 that absence from Australia.

1 (c) if the event is political or social unrest, industrial action or
2 war—the employee is not willingly involved in, or willingly
3 participating in, the event.

4 (10) If an employee is absent from Australia for private purposes, the
5 relevant authority may, by writing, approve the extension of that
6 absence to a specified time, if the relevant authority is satisfied that
7 there are special circumstances that warrant giving that approval.

8 *Compensation rights*

9 (11) For the purposes of this section, an employee's **compensation**
10 **rights** means the employee's rights:

- 11 (a) to compensation under section 19, 20, 21, 21A, 22 or 31; and
12 (b) to institute or continue any proceedings under this Act in
13 relation to compensation.

14 (12) If an employee's right to compensation is suspended under this
15 section, compensation is not payable in respect of the period of the
16 suspension.

17 *Conditional weekly compensation payments*

18 (13) If:

- 19 (a) an employee's compensation rights have been suspended
20 under this section; and
21 (b) the suspension ends when the employee returns to Australia;
22 any compensation paid to the employee under section 19, 20, 21A,
23 22 or 31 in respect of the first 6 weeks following the return to
24 Australia is subject to the condition that, throughout that 6-week
25 period, the employee will remain in Australia unless:
26 (c) the employee is absent from Australia for work purposes; or
27 (d) both:
28 (i) the employee is absent from Australia; and
29 (ii) the relevant authority has, by writing, approved the
30 employee's absence from Australia.

31 (14) The relevant authority must not give an approval under
32 paragraph (13)(d) unless the relevant authority is satisfied that
33 there are special circumstances that warrant giving that approval.

1 (15) If the condition mentioned in subsection (13) is contravened in
2 relation to an amount of compensation that has been paid,
3 paragraph 114(1)(b) has effect as if that amount should not have
4 been paid.

5 *Exemption*

6 (16) The relevant authority may, by writing, exempt an employee from
7 this section if the relevant authority is satisfied that there are
8 special circumstances that warrant giving that exemption.

9 **2 Subsection 60(1) (definition of *determination*)**

10 After “25,”, insert “29K,”.

11 **3 Subsection 120 (heading)**

12 Repeal the heading, substitute:

13 **120 Notice of departure from and return to Australia etc.**

14 **4 Subsection 120(1)**

15 Omit “19 are being made, and have been made for a period of 3 months
16 or longer,”, substitute “19, 20, 21, 21A, 22 or 31 are being made”.

17 **5 At the end of subsection 120(2)**

18 Add:

19 ; and (c) if the person proposes to return to Australia—specifying the
20 day on which the person proposes to return to Australia.

21 **6 At the end of subsection 120(3)**

22 Add:

23 ; and (c) if the person proposes to return to Australia—specifying the
24 day on which the person proposes to return to Australia.

25 **7 Subsections 120(4) and (5)**

26 Repeal the subsections, substitute:

27 (4) If:

28 (a) the person gave a notice under subsection (2) in relation to a
29 proposal to leave Australia; and

- 1 (b) the person left Australia more than 7 days after the day
2 specified in the notice as the day on which the person
3 proposed to leave Australia;
4 the person must:
5 (c) notify the relevant authority, in writing, of the day on which
6 the person left Australia; and
7 (d) do so within 7 days after the person left Australia.
- 8 (5) If:
9 (a) the person has left Australia in accordance with a notice
10 given under subsection (2); and
11 (b) the person has returned to Australia; and
12 (c) either:
13 (i) the notice did not specify the day on which the person
14 proposed to return to Australia; or
15 (ii) the person returned to Australia on a day other than the
16 day specified in the notice as the day on which the
17 person proposed to return to Australia;
18 the person must:
19 (d) notify the relevant authority, in writing, of the day the person
20 returned to Australia; and
21 (e) do so within 7 days after the person returned to Australia.
- 22 (6) If:
23 (a) the person gave a notice under subsection (3) in relation to
24 the person leaving Australia; and
25 (b) the person has returned to Australia; and
26 (c) either:
27 (i) the notice did not specify the day on which the person
28 proposed to return to Australia; or
29 (ii) the person returned to Australia on a day other than the
30 day specified in the notice as the day on which the
31 person proposed to return to Australia;
32 the person must:
33 (d) notify the relevant authority, in writing, of the day the person
34 returned to Australia; and
35 (e) do so within 7 days after the person returned to Australia.

1 **Part 2—Application and transitional provisions**

2 **8 Application of amendments**

3 The amendments of section 120 of the *Safety, Rehabilitation and*
4 *Compensation Act 1988* made by this Schedule apply in relation to a
5 person who leaves Australia after the commencement of this item.

6 **9 Transitional—notification of absence from Australia**

7 *Scope*

- 8 (1) This item applies to a person to whom payments of compensation under
9 section 19, 20, 21, 21A, 22 or 31 of the *Safety, Rehabilitation and*
10 *Compensation Act 1988* are being made by a relevant authority.

11 *Notification*

- 12 (2) If the person is absent from Australia at the commencement of this item,
13 the person must:
14 (a) notify the relevant authority, in writing, of the person's
15 absence from Australia; and
16 (b) do so within 7 days after the commencement of this item.

17 *Offence*

- 18 (3) A person commits an offence if:
19 (a) the person is subject to a requirement under subitem (2); and
20 (b) the person omits to do an act; and
21 (c) the omission breaches the requirement.

22 Penalty: 10 penalty units.

- 23 (4) Subitem (3) is an offence of strict liability.

24 Note: For strict liability, see section 6.1 of the *Criminal Code*.

- 25 (5) Subitem (3) does not apply if the person has a reasonable excuse.

26 Note: A defendant bears an evidential burden in relation to the matter in subitem (5) (see
27 subsection 13.3(3) of the *Criminal Code*).

1 **Schedule 8—Accrual of leave while receiving**
2 **compensation**
3

4 *Safety, Rehabilitation and Compensation Act 1988*

5 **1 After subsection 116(1)**

6 Insert:

7 (1A) Subsection (1) has no effect to the extent to which it is inconsistent
8 with section 130 of the *Fair Work Act 2009*.

1 **Schedule 9—Calculation of compensation**

2 **Part 1—Amendments**

3 *Safety, Rehabilitation and Compensation Act 1988*

4 **1 Subsection 4(1)**

5 Insert:

6 *average weekly remuneration* means the average weekly
7 remuneration of an employee calculated under section 8.

8 *eligible allowance* means any of the following allowances payable
9 to an employee:

- 10 (a) an allowance payable in respect of a specific qualification
11 held by the employee;
- 12 (b) an allowance payable in respect of specific duties performed
13 by the employee;
- 14 (c) an allowance that is:
- 15 (i) payable because of specific circumstances in which the
16 employee performs the duties of his or her employment;
17 and
- 18 (ii) not intended to cover specific expenses incurred by the
19 employee;
- 20 (d) a location allowance that is:
- 21 (i) payable because the employee performs the duties of his
22 or her employment at a particular location; and
- 23 (ii) payable when the employee's primary place of
24 residence is at the location;
- 25 (e) a higher duties allowance;
- 26 (f) a shift allowance;
- 27 (g) an allowance prescribed by the regulations.

28 **2 Subsection 4(1) (definition of *employee*)**

29 Omit “, and also applies to persons 65 years of age or older”.

1 **3 Subsection 4(1)**

2 Insert:

3 *fringe benefit* has the same meaning as in the *Fringe Benefits Tax*
4 *Assessment Act 1986* (as it applies of its own force or because of
5 the *Fringe Benefits Tax (Application to the Commonwealth) Act*
6 *1986*).

7 *monetary remuneration* means:

- 8 (a) salary or wages attributable to an employee's employment; or
9 (b) piece rates attributable to an employee's employment; or
10 (c) commissions attributable to an employee's employment; or
11 (d) eligible allowances attributable to an employee's
12 employment; or
13 (e) pay for overtime worked by an employee.

14 **4 Subsection 4(1) (definition of *normal weekly earnings*)**

15 Repeal the definition.

16 **5 Subsection 4(1) (definition of *normal weekly hours*)**

17 Repeal the definition.

18 **6 Subsection 4(1)**

19 Insert:

20 *pension age* has the meaning given by subsection 23(5A), (5B),
21 (5C) or (5D) of the *Social Security Act 1991*.

22 *total remuneration* of an employee has the meaning given by
23 section 8A.

24 **7 Section 8 (heading)**

25 Repeal the heading, substitute:

26 **8 Average weekly remuneration**

27 **8 Subsections 8(1), (2) and (3)**

28 Repeal the subsections, substitute:

1 (1) For the purposes of this Act, the *average weekly remuneration* of
2 an employee before an injury is calculated in relation to the
3 relevant period using the formula:

4
$$\frac{\text{Total remuneration of the employee for the relevant period}}{\text{Number of weeks in the relevant period}}$$

5 *Other employment*

6 (2) For the purposes of subsection (1), if:

- 7 (a) at the date of the injury, the employee was employed by the
8 Commonwealth or a licensed corporation in paid or unpaid
9 employment; and
10 (b) throughout the 6-week period ending at the date of the injury,
11 the employee was engaged in other employment; and
12 (c) in engaging in the other employment, the employee complied
13 with the terms and conditions of his or her employment by
14 the Commonwealth or the licensed corporation; and
15 (d) assuming section 8A applied to the other employment during
16 the relevant period in a corresponding way to the way in
17 which that section applies to employment by the
18 Commonwealth or the licensed corporation, any part of the
19 total remuneration of the employee for the relevant period is
20 attributable to the employee's other employment during the
21 relevant period;

22 that part is to be treated as a part of the total remuneration of the
23 employee for the relevant period.

24 **9 Subsection 8(4)**

25 Omit "normal weekly earnings" (first occurring), substitute "average
26 weekly remuneration".

27 **10 Subsection 8(4)**

28 Omit "or (2)" (first occurring).

29 **11 Subsection 8(4)**

30 Omit "normal weekly earnings" (second, third and fourth occurring),
31 substitute "average weekly remuneration".

1 **12 Subsection 8(4)**

2 Omit “or (2), as the case requires”.

3 **13 Subsection 8(5)**

4 Repeal the subsection.

5 **14 Before subsection 8(6)**

6 Insert:

7 *Remuneration—increases and decreases*

8 **15 Subsections 8(6) and (7)**

9 Omit “normal weekly earnings”, substitute “average weekly
10 remuneration”.

11 **16 Paragraph 8(8)(a)**

12 Repeal the paragraph, substitute:

13 (a) the employment of an employee is unpaid employment of a
14 kind referred to in paragraph (2)(a) of this section; and

15 **17 Paragraph 8(8)(b)**

16 Omit “earnings”, substitute “remuneration”.

17 **18 Subsection 8(8)**

18 Omit “normal weekly earnings”, substitute “average weekly
19 remuneration”.

20 **19 Subsection 8(8)**

21 Omit “been able to earn at the date of the injury (including any amount
22 in respect of overtime worked on a regular basis)”, substitute “received
23 as remuneration at the date of the injury”.

24 **20 Subsections 8(9), (9B) and (9E)**

25 Omit “normal weekly earnings”, substitute “average weekly
26 remuneration”.

1 **21 Paragraphs 8(9E)(a) and (b)**

2 Omit “those earnings”, substitute “the average weekly remuneration”.

3 **22 Subsection 8(9F)**

4 Omit “normal weekly earnings”, substitute “average weekly
5 remuneration”.

6 **23 Subsection 8(9F)**

7 Omit “they are”, substitute “it is”.

8 **24 After subsection 8(9G)**

9 Insert:

10 (9H) If:

11 (a) apart from this subsection, the amount of the average weekly
12 remuneration of an employee before an injury is worked out
13 on the basis that the total remuneration of the employee for
14 the relevant period includes a location allowance that was
15 payable because the employee’s primary place of residence
16 was at a particular location; and

17 (b) the employee’s current primary place of residence is not at
18 that location;
19 the amount of the average weekly remuneration of the employee
20 before the injury is to be calculated as if the total remuneration of
21 the employee for the relevant period did not include the location
22 allowance.

23 **25 Subsection 8(10)**

24 Repeal the subsection, substitute:

25 (10) If the amount of the average weekly remuneration of an employee
26 before an injury, as calculated under the preceding subsections,
27 would exceed the amount per week of the remuneration that the
28 employee would receive if he or she were not incapacitated for
29 work, the amount so calculated is to be reduced by the amount of
30 the excess.

31 **26 At the end of section 8**

32 Add:

1 (11) For the purposes of subsection (10), if an employee is suspended
2 from his or her employment, he or she is taken to be employed
3 during the suspension.

4 (12) Subsections (6), (7), (9), (9H) and (10) operate from time to time
5 for the purposes of working out compensation payable under this
6 Act to an employee for a particular week.

7 **27 After section 8**

8 Insert:

9 **8A Total remuneration**

- 10 (1) For the purposes of calculating the average weekly remuneration of
11 an employee before an injury, the *total remuneration* of the
12 employee for the relevant period is the sum of the following:
- 13 (a) salary or wages attributable to the employee's employment
14 with the Commonwealth or a licensed corporation during the
15 relevant period;
 - 16 (b) piece rates attributable to the employee's employment with
17 the Commonwealth or a licensed corporation during the
18 relevant period;
 - 19 (c) commissions attributable to the employee's employment with
20 the Commonwealth or a licensed corporation during the
21 relevant period;
 - 22 (d) the value of the fringe benefits that are attributable to the
23 employee's employment with the Commonwealth or a
24 licensed corporation during the relevant period;
 - 25 (e) reportable employer superannuation contributions
26 attributable to the employee's employment with the
27 Commonwealth or a licensed corporation during the relevant
28 period;
 - 29 (f) if the average weekly remuneration is to be used for working
30 out compensation payable under this Act to the employee in
31 respect of the injury for a week included in the first 104
32 weeks during which the employee is incapacitated—eligible
33 allowances attributable to the employee's employment with
34 the Commonwealth or a licensed corporation during the
35 relevant period;

- 1 (g) if:
2 (i) the average weekly remuneration is to be used for
3 working out compensation payable under this Act to the
4 employee in respect of the injury for a week included in
5 the first 104 weeks during which the employee is
6 incapacitated; and
7 (ii) the employee worked overtime in connection with the
8 employee's employment with the Commonwealth or a
9 licensed corporation during the relevant period; and
10 (iii) it is likely that, if the employee had not suffered the
11 injury, the employee would have worked overtime in
12 connection with the employee's employment with the
13 Commonwealth or a licensed corporation during the
14 first 104 weeks during which the employee is
15 incapacitated;
16 the pay for overtime worked by the employee as mentioned
17 in subparagraph (ii) during the relevant period.

18 *Value of fringe benefits*

- 19 (2) For the purposes of paragraph (1)(d), the value of the fringe
20 benefits that are attributable to the employee's employment with
21 the Commonwealth or a licensed corporation during the relevant
22 period is:
23 (a) if the relevant period is included in a particular FBT year—
24 the amount that would be the employee's reportable fringe
25 benefits total for the income year in which that FBT year
26 ended if the modifications set out in subsection (3) were
27 made; or
28 (b) if a part of the relevant period is included in a particular FBT
29 year (the *first FBT year*) and the remainder of the relevant
30 period is included in the next FBT year—the sum of:
31 (i) the amount that would be the employee's reportable
32 fringe benefits total for the income year in which the
33 first FBT year ended if the modifications set out in
34 subsection (3) were made; and
35 (ii) the amount that would be the employee's reportable
36 fringe benefits total for the income year in which the
37 next FBT year ended if the modifications set out in
38 subsection (3) were made.
-

- 1 (3) For the purposes of subsection (2), the modifications are as
2 follows:
3 (a) disregard any fringe benefit provided in respect of
4 employment that is not the employee's employment with the
5 Commonwealth or the licensed corporation;
6 (b) disregard any fringe benefit provided outside the relevant
7 period;
8 (c) disregard any fringe benefit if it is of a kind that continues to
9 be provided to the employee when the employee is
10 incapacitated for work.

11 *Reportable employer superannuation contributions*

- 12 (4) For the purposes of paragraph (1)(e), the reportable employer
13 superannuation contributions that are attributable to the employee's
14 employment with the Commonwealth or a licensed corporation
15 during the relevant period means:
16 (a) if the relevant period is included in a particular income
17 year—the amount that would be the employee's reportable
18 employer superannuation contributions for the income year if
19 the modifications set out in subsection (5) were made; or
20 (b) if a part of the relevant period is included in a particular
21 income year (the *first income year*) and the remainder of the
22 relevant period is included in the next income year—the sum
23 of:
24 (i) the amount that would be the employee's reportable
25 employer superannuation contributions for the first
26 income year if the modifications set out in
27 subsection (5) were made; and
28 (ii) the amount that would be the employee's reportable
29 employer superannuation contributions for the next
30 income year if the modifications set out in
31 subsection (5) were made.

- 32 (5) For the purposes of subsection (4), the modifications are as
33 follows:
34 (a) disregard any reportable employer superannuation
35 contribution that is not attributable to the employee's
36 employment with the Commonwealth or the licensed
37 corporation; and

1 (b) disregard any reportable employer superannuation
2 contribution to the extent that it is not attributable to the
3 relevant period.

4 *Definitions*

5 (6) In this section:

6 ***FBT year*** has the same meaning as in the *Fringe Benefits Tax*
7 *Assessment Act 1986* (as it applies of its own force or because of
8 the *Fringe Benefits Tax (Application to the Commonwealth) Act*
9 *1986*).

10 ***income year*** has the same meaning as in the *Income Tax*
11 *Assessment Act 1997*.

12 ***reportable employer superannuation contributions*** has the same
13 meaning as in the *Income Tax Assessment Act 1997*.

14 ***reportable fringe benefits total*** has the same meaning as in the
15 *Fringe Benefits Tax Assessment Act 1986* (as it applies of its own
16 force or because of the *Fringe Benefits Tax (Application to the*
17 *Commonwealth) Act 1986*).

18 **28 Subsection 9(1)**

19 Repeal the subsection, substitute:

20 *Basic rule*

21 (1) For the purposes of calculating the average weekly remuneration of
22 an employee before an injury, the ***relevant period*** is, subject to this
23 section, the latest period of 2 weeks before the date of the injury
24 during which the employee was continuously employed by the
25 Commonwealth or a licensed corporation.

26 **29 Subsection 9(3)**

27 Omit “normal weekly earnings” (wherever occurring), substitute
28 “average weekly remuneration”.

29 **30 At the end of section 9**

30 Insert:

Alternative relevant period

- 1
- 2 (5) The relevant authority may determine that, for the purposes of
3 calculating the average weekly remuneration of an employee
4 before an injury, the **relevant period** is the period specified in the
5 determination, instead of the period calculated under the preceding
6 subsections.
- 7 (6) The relevant authority must not determine a period for an
8 employee under subsection (5) unless the relevant authority is
9 satisfied that the remuneration attributable to the employee's
10 employment during the period is a fair representation of the
11 remuneration that was attributable to the employee's employment
12 before the date of the injury concerned.
- 13 (7) A period determined by the relevant authority under subsection (5)
14 must consist of:
15 (a) a single week; or
16 (b) 2 or more weeks (whether consecutive or otherwise).
- 17 (8) If the relevant authority determines a period for an employee under
18 subsection (5), the relevant authority must notify the employee, in
19 writing, of the determination.

20 **31 Subsections 19(2) to (3)**

21 Repeal the subsections, substitute:

- 22 (2) Subject to this Part, Comcare is liable to pay to the employee in
23 respect of the injury, for each week during which the employee is
24 incapacitated for work as a result of the injury, an amount of
25 compensation worked out using the formula:

26
$$\left(\begin{array}{l} \text{Adjustment} \\ \text{percentage} \end{array} \times \begin{array}{l} \text{Average weekly} \\ \text{remuneration} \end{array} \right) - \begin{array}{l} \text{Applicable} \\ \text{earnings} \end{array}$$

27 where:

28 ***adjustment percentage*** means:

- 29 (a) if the employee is incapacitated for work as a result of the
30 injury for 13 weeks or less—100%; or
31 (b) if the employee is incapacitated for work as a result of the
32 injury for more than 13 weeks—90%.

1 *applicable earnings* is the greater of the following amounts:

- 2 (a) the amount per week (if any) that the employee is able to
3 earn in suitable employment;
4 (b) the amount per week (if any) that the employee earns from
5 any employment (including self-employment) that is
6 undertaken by the employee during that week.

7 *average weekly remuneration* is the amount of the employee's
8 average weekly remuneration before the injury.

9 (2A) If the employee is incapacitated for work as a result of the injury
10 for at least 27 weeks but less than 53 weeks, the amount of
11 compensation payable to the employee in respect of a week under
12 subsection (2) must not exceed 80% of the employee's average
13 weekly remuneration before the injury.

14 (2B) If the employee is incapacitated for work as a result of the injury
15 for 53 weeks or more, the amount of compensation payable to the
16 employee in respect of a week under subsection (2) must not
17 exceed 70% of the employee's average weekly remuneration
18 before the injury.

19 (2C) For the purposes of subsections (2), (2A) and (2B), it is immaterial
20 whether the weeks mentioned in those subsections are consecutive.

21 **32 Before subsection 19(3A)**

22 Insert:

23 *Pension payable under superannuation scheme*

24 **33 Subsection 19(3A)**

25 Omit "subsection (3)", substitute "subsection (2)".

26 **34 Before subsection 19(4)**

27 Insert:

28 *Amount per week employee is able to earn in suitable employment*

29 **35 Subsection 19(4)**

30 Omit "subsections (2) and (3)", substitute "subsection (2)".

1 **36 Subsections 19(5), (6) and (7)**

2 Repeal the subsections, substitute:

3 (5) If:

4 (a) the employee is incapacitated for work as a result of the
5 injury for more than 13 weeks (whether consecutive or not);
6 and

7 (b) an amount of compensation calculated under subsection (2)
8 exceeds 150% of the amount called the *Average Weekly*
9 *Ordinary Time Earnings of Full-time Adults*, as published
10 from time to time by the Australian Statistician;

11 the amount of compensation calculated under subsection (2) is to
12 be reduced by an amount equal to the excess.

13 *Minimum earnings protection*

14 (6) If:

15 (a) the employee is incapacitated for work as a result of the
16 injury for more than 13 weeks (whether consecutive or not);
17 and

18 (b) the minimum earnings of the employee exceeds 90% of the
19 employee's average weekly remuneration before the injury;
20 subsections (2A) and (2B) do not apply to the calculation of the
21 amount of compensation under subsection (2).

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

24 (a) \$446.84; or

25 (b) if subsection (8) or (9) applies in relation to the employee—
26 the sum of:

27 (i) \$446.84; and

28 (ii) the amount or amounts required to be added under
29 whichever of those subsections applies.

30 **37 Subsections 19(8) and (9)**

31 Omit "\$202 specified in paragraph (7)(a)", substitute "\$446.84
32 specified in subsection (7)".

1 **38 Subsection 20(3) (formula)**

2 Repeal the formula, substitute:

3 Amount of compensation – Superannuation amount

4 **39 Subsection 20(3) (definition of *amount of compensation*)**

5 Repeal the definition, substitute:

6 *amount of compensation* means the amount of compensation that
7 would have been payable to the employee for a week if section 19
8 had applied to the employee.

9 **40 Subsection 20(4)**

10 Repeal the subsection.

11 **41 Subsection 21(3) (formula)**

12 Repeal the formula, substitute:

13 Amount of compensation – Weekly interest on the lump sum

14 **42 Subsection 21(3) (definition of *amount of compensation*)**

15 Repeal the definition, substitute:

16 *amount of compensation* means the amount of compensation that
17 would have been payable to the employee for a week if section 19
18 had applied to the employee.

19 **43 Subsection 21(4)**

20 Repeal the subsection.

21 **44 Subsection 21A(3) (formula)**

22 Repeal the formula, substitute:

23 Amount of compensation – $\left(\begin{array}{l} \text{Superannuation amount} \\ \text{in relation to the person} \end{array} + \begin{array}{l} \text{Weekly interest on} \\ \text{the lump sum} \end{array} \right)$

24 **45 Subsection 21A(3) (definition of *amount of compensation*)**

25 Repeal the definition, substitute:

1 **55 Subsection 23A(6)**

2 Omit “of the Commonwealth salary etc.”, substitute “of the
3 Commonwealth monetary”.

4 **56 Subsection 23A(9)**

5 Omit “salary etc.”, substitute “monetary”.

6 **57 Subsection 30(3) (paragraph (a) of the definition of**
7 ***number of days*)**

8 Repeal the paragraph, substitute:

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

12 **58 Subsection 30(3) (paragraph (b) of the definition of**
13 ***number of days*)**

14 Omit “63 years of age”, substitute “the age that is 2 years before
15 pension age”.

16 **59 Subsection 33(1)**

17 Omit “salary, wages or pay”, substitute “monetary remuneration”.

18 **60 Paragraph 33(2)(e)**

19 Omit “salary etc.”, substitute “monetary”.

20 **61 Subsection 60(1) (definition of *determination*)**

21 Before “14,”, insert “9,”.

22 **62 Subsection 97F(1)**

23 Omit “salary, wages or pay”, substitute “monetary remuneration”.

24 **63 Subsection 112A(4) (note)**

25 Omit “salary etc.”, substitute “monetary remuneration”.

26 **64 Subsection 112B(4) (note)**

27 Omit “salary etc.”, substitute “monetary remuneration”.

1 **65 Subsection 131(2)**

2 Omit “his or her normal weekly earnings”, substitute “his or her average
3 weekly remuneration”.

4 **66 Subsection 131(2)**

5 Omit “those normal weekly earnings”, substitute “that average weekly
6 remuneration”.

7 **67 Subsection 131(2A)**

8 Omit “employee’s normal weekly earnings”, substitute “employee’s
9 average weekly remuneration”.

10 **68 Subsection 131(2A)**

11 Omit “those increased normal weekly earnings” (wherever occurring),
12 substitute “that increased average weekly remuneration”.

13 **69 Subsection 131(3)**

14 Omit “his or her normal weekly earnings”, substitute “his or her average
15 weekly remuneration”.

16 **70 Subsection 131(3A)**

17 Omit “employee’s normal weekly earnings”, substitute “employee’s
18 average weekly remuneration”.

19 **71 Subsection 131(3A)**

20 Omit “those increased normal weekly earnings” (wherever occurring),
21 substitute “that increased average weekly remuneration”.

22 **72 Subsection 131(4)**

23 Omit “his or her normal weekly earnings” (wherever occurring),
24 substitute “his or her average weekly remuneration”.

25 **73 Paragraph 131(5)(b)**

26 Omit “employee’s normal weekly earnings”, substitute “employee’s
27 average weekly remuneration”.

1 **74 Subsection 131(6)**

2 Omit “employee’s normal weekly earnings”, substitute “employee’s
3 average weekly remuneration”.

4 **75 Subsection 132(2)**

5 Omit “his or her normal weekly earnings”, substitute “his or her average
6 weekly remuneration”.

7 **76 Subsection 132(2)**

8 Omit “those normal weekly earnings”, substitute “that average weekly
9 remuneration”.

10 **77 Subsections 132(3) and (4)**

11 Omit “his or her normal weekly earnings”, substitute “his or her average
12 weekly remuneration”.

13 **78 Subsection 132(4)**

14 Omit “those normal weekly earnings”, substitute “that average weekly
15 remuneration”.

16 **79 Subsection 132(5)**

17 Omit “employee’s normal weekly earnings”, substitute “employee’s
18 average weekly remuneration”.

19 **80 Subsection 132(5)**

20 Omit “those increased normal weekly earnings” (wherever occurring),
21 substitute “that increased average weekly remuneration”.

22 **81 Paragraph 132A(3)(b)**

23 Omit “his or her normal weekly earnings”, substitute “his or her average
24 weekly remuneration”.

25 **82 Subsection 137(5) (definition of *number of days*)**

26 Omit “65 years of age”, substitute “pension age”.

1 **Part 2—Application and transitional provisions**

2 **83 Application of amendments**

- 3 (1) The amendments made by this Schedule (other than the amendments of
4 sections 23A and 30, paragraph 33(2)(e) and sections 97F, 112A, 112B
5 and 137 of the *Safety, Rehabilitation and Compensation Act 1988*)
6 apply in relation to a payment of compensation in respect of a week that
7 began after the commencement of this item.
- 8 (2) The amendments of section 23A, paragraph 33(2)(e) and sections 112A
9 and 112B of the *Safety, Rehabilitation and Compensation Act 1988*
10 made by this Schedule apply in relation to a payment made by the
11 Commonwealth after the commencement of this item.
- 12 (3) The amendment of section 97F of the *Safety, Rehabilitation and*
13 *Compensation Act 1988* made by this Schedule applies in relation to an
14 estimate given after the commencement of this item.
- 15 (4) The amendment of section 137 of the *Safety, Rehabilitation and*
16 *Compensation Act 1988* made by this Schedule applies in relation to a
17 determination made by the relevant authority after the commencement
18 of this item.

19 **84 Transitional—weekly compensation payments**

- 20 (1) In this item:
21 *post-commencement week* means a week that began after the
22 commencement of this item.
- 23 (2) If, as at the commencement of this item, an employee has been
24 incapacitated for work as a result of an injury for a number of weeks
25 that is 13 or less:
26 (a) for each of the first 13 post-commencement weeks for which
27 the employee is incapacitated for work as a result of the
28 injury, section 19 of the *Safety, Rehabilitation and*
29 *Compensation Act 1988* (as amended by this Schedule) has
30 effect in relation to the employee as if:
31 (i) the adjustment percentage were 100%; and

- 1 (ii) subsections 19(2A) and (2B) of that Act had not been
2 enacted; and
- 3 (b) if the employee is incapacitated for work as a result of the
4 injury for at least 14 post-commencement weeks but less than
5 27 post-commencement weeks, section 19 of the *Safety,*
6 *Rehabilitation and Compensation Act 1988* (as amended by
7 this Schedule) has effect in relation to the employee as if:
8 (i) the adjustment percentage were 90%; and
9 (ii) subsections 19(2A) and (2B) of that Act had not been
10 enacted; and
- 11 (c) if the employee is incapacitated for work as a result of the
12 injury for at least 27 post-commencement weeks but less than
13 53 post-commencement weeks, section 19 of the *Safety,*
14 *Rehabilitation and Compensation Act 1988* (as amended by
15 this Schedule) has effect in relation to the employee as if:
16 (i) the adjustment percentage were 90%; and
17 (ii) the amount of compensation payable to the employee in
18 respect of the week under subsection 19(2) of that Act
19 must not exceed 80% of the employee's average weekly
20 remuneration before the injury; and
21 (iii) subsections 19(2A) and (2B) of that Act had not been
22 enacted; and
- 23 (d) if the employee is incapacitated for work as a result of the
24 injury for 53 post-commencement weeks or more, section 19
25 of the *Safety, Rehabilitation and Compensation Act 1988* (as
26 amended by this Schedule) has effect in relation to the
27 employee as if:
28 (i) the adjustment percentage were 90%; and
29 (ii) the amount of compensation payable to the employee in
30 respect of the week under subsection 19(2) of that Act
31 must not exceed 70% of the employee's average weekly
32 remuneration before the injury; and
33 (iii) subsections 19(2A) and (2B) of that Act had not been
34 enacted.
- 35 (3) If, as at the commencement of this item, an employee has been
36 incapacitated for work as a result of an injury for a number of weeks
37 that is at least 14 but less than 27:

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- 1 (a) for each of the first 13 post-commencement weeks for which
2 the employee is incapacitated for work as a result of the
3 injury, section 19 of the *Safety, Rehabilitation and*
4 *Compensation Act 1988* (as amended by this Schedule) has
5 effect in relation to the employee as if:
6 (i) the adjustment percentage were 100%; and
7 (ii) subsections 19(2A) and (2B) of that Act had not been
8 enacted; and
9 (b) if the employee is incapacitated for work as a result of the
10 injury for at least 14 post-commencement weeks but less than
11 27 post-commencement weeks, section 19 of the *Safety,*
12 *Rehabilitation and Compensation Act 1988* (as amended by
13 this Schedule) has effect in relation to the employee as if:
14 (i) the adjustment percentage were 90%; and
15 (ii) the amount of compensation payable to the employee in
16 respect of the week under subsection 19(2) of that Act
17 must not exceed 80% of the employee's average weekly
18 remuneration before the injury; and
19 (iii) subsections 19(2A) and (2B) of that Act had not been
20 enacted; and
21 (c) if the employee is incapacitated for work as a result of the
22 injury for 27 post-commencement weeks or more, section 19
23 of the *Safety, Rehabilitation and Compensation Act 1988* (as
24 amended by this Schedule) has effect in relation to the
25 employee for a week as if:
26 (i) the adjustment percentage were 90%; and
27 (ii) the amount of compensation payable to the employee in
28 respect of the week under subsection 19(2) of that Act
29 must not exceed 70% of the employee's average weekly
30 remuneration before the injury; and
31 (iii) subsections 19(2A) and (2B) of that Act had not been
32 enacted.
- 33 (4) If as at the commencement of this item, an employee has been
34 incapacitated for work as a result of an injury for a number of weeks
35 that is at least 27 but less than 46:
36 (a) for the purposes of this item, *N* is whichever is the lesser of:
37 (i) the difference between 45 and that number; and
38 (ii) 13; and
-

- 1 (b) for each of the first *N* post-commencement weeks for which
2 the employee is incapacitated for work as a result of the
3 injury, section 19 of the *Safety, Rehabilitation and*
4 *Compensation Act 1988* (as amended by this Schedule) has
5 effect in relation to the employee as if:
6 (i) the adjustment percentage were 100%; and
7 (ii) subsections 19(2A) and (2B) of that Act had not been
8 enacted; and
9 (c) for each later post-commencement week for which the
10 employee is incapacitated for work as a result of the injury,
11 section 19 of the *Safety, Rehabilitation and Compensation*
12 *Act 1988* (as amended by this Schedule) has effect in relation
13 to the employee as if:
14 (i) the adjustment percentage were 90%; and
15 (ii) the amount of compensation payable to the employee in
16 respect of the week under subsection 19(2) of that Act
17 must not exceed 70% of the employee's average weekly
18 remuneration before the injury; and
19 (iii) subsections 19(2A) and (2B) of that Act had not been
20 enacted.
- 21 (5) If, as at the commencement of this item, an employee has been
22 incapacitated for work as a result of an injury for 46 weeks or more,
23 then, for each post-commencement week for which the employee is
24 incapacitated for work as a result of the injury, section 19 of the *Safety,*
25 *Rehabilitation and Compensation Act 1988* (as amended by this
26 Schedule) has effect in relation to the employee as if:
27 (a) the adjustment percentage were 90%; and
28 (b) the amount of compensation payable to the employee in
29 respect of the week under subsection 19(2) of that Act must
30 not exceed 70% of the employee's average weekly
31 remuneration before the injury; and
32 (c) subsections 19(2A) and (2B) of that Act had not been
33 enacted.
- 34 (6) For the purposes of subitems (2), (3), (4) and (5), it is immaterial
35 whether the weeks mentioned in those subsections are consecutive.

- 1 (7) To avoid doubt, the effect that section 19 of the *Safety, Rehabilitation*
2 *and Compensation Act 1988* (as amended by this Schedule) has in
3 relation to the employee:
4 (a) may be a direct result of compensation being payable under
5 that section to the employee; or
6 (b) may be an indirect result of working out the compensation
7 payable under section 20, 21, 21A, 22 or 31 to the employee.

8 **85 Transitional—average weekly remuneration**

9 Subsection 8(9E) of the *Safety, Rehabilitation and Compensation Act*
10 *1988* (as amended by this Schedule) has no effect in relation to 1 July in
11 a year unless that 1 July occurs after the 6-month period that began at
12 the commencement of this item.

13 **86 Transitional—indexation**

14 Section 13 of the *Safety, Rehabilitation and Compensation Act 1988*
15 applies in relation to an amount specified in subsection 19(7), (8) or (9)
16 of that Act (as amended by this Schedule) as if the reference in the
17 definition of *relevant year* in subsection 13(1) of that Act to 1 July 1988
18 were a reference to 1 July next following the 6-month period that began
19 at the commencement of this item.

20 **87 Transitional—certain former employees**

21 The amendments of sections 131, 132 and 132A of the *Safety,*
22 *Rehabilitation and Compensation Act 1988* made by this Schedule do
23 not apply in relation to a former employee (within the meaning of
24 Part X of that Act) if it is not practicable to calculate the former
25 employee's average weekly remuneration.

1 **Schedule 10—Redemption of compensation**

2 **Part 1—Amendments**

3 *Safety, Rehabilitation and Compensation Act 1988*

4 **1 Paragraph 30(1)(b)**

5 Omit “\$50”, substitute “\$208.91”.

6 **2 Paragraph 137(1)(b)**

7 Omit “\$62.99”, substitute “\$208.91”.

1 **Part 2—Transitional provisions**

2 **3 Transitional—indexation**

3 Section 13 of the *Safety, Rehabilitation and Compensation Act 1988*
4 applies in relation to the amount specified in subsection 30(1) or 137(1)
5 of that Act (as amended by this Schedule) as if the reference in the
6 definition of *relevant year* in subsection 13(1) of that Act to 1 July 1988
7 were a reference to 1 July next following the 6-month period that began
8 at the commencement of this item.

1 **Schedule 11—Legal costs**

2 **Part 1—Amendments**

3 *Safety, Rehabilitation and Compensation Act 1988*

4 **1 Subsection 4(1)**

5 Insert:

6 *Schedule of Legal Costs* means the schedule prescribed under
7 section 67A.

8 **2 After section 62**

9 Insert:

10 **62A Reimbursement of costs incurred by a claimant in connection**
11 **with reconsideration of a determination**

12 (1) If:

13 (a) a decision has been made, following a reconsideration under
14 subsection 62(4):

15 (i) to vary a determination in a way that results in a more
16 favourable outcome for the claimant; or

17 (ii) to revoke a determination; and

18 (b) the claimant gives the determining authority a written
19 undertaking not to make an application to the Administrative
20 Appeals Tribunal for review of the decision;

21 the determining authority may reimburse the claimant for the
22 whole or a part of the costs reasonably incurred by the claimant in
23 connection with the reconsideration.

24 (2) In exercising the power conferred by subsection (1), the
25 determining authority must comply with the Schedule of Legal
26 Costs.

27 (3) If:

28 (a) a claimant has given an undertaking to the determining
29 authority under paragraph (1)(b) not to apply to the
30 Administrative Appeals Tribunal for review of a decision

- 1 made following a reconsideration under subsection 62(4);
2 and
3 (b) the determining authority has paid the claimant an amount
4 under subsection (1) by way of reimbursement of the whole
5 or a part of the costs reasonably incurred by the claimant in
6 connection with the reconsideration;
7 the claimant is not entitled to make an application to the
8 Administrative Appeals Tribunal for review of the decision unless:
9 (c) the claimant has, by written notice given to the determining
10 authority, withdrawn the undertaking; and
11 (d) the claimant has repaid the amount to the determining
12 authority.

13 **3 After subsection 66(1)**

14 Insert:

15 (1A) If:

- 16 (a) proceedings have been instituted under this Part; and
17 (b) a party to the proceedings (other than the claimant) seeks to
18 adduce any matter in evidence before the Administrative
19 Appeals Tribunal in those proceedings; and
20 (c) the party had not disclosed that matter to the Tribunal at least
21 28 days before the day fixed for the hearing of those
22 proceedings;
23 that matter is not admissible in evidence in those proceedings
24 without the leave of the Tribunal.

25 **4 Subsection 67(8A)**

26 After “instituted by the Commonwealth”, insert “, or a part of those
27 costs,”.

28 **5 Subsections 67(8B) and (9)**

29 After “incurred by the claimant”, insert “, or a part of those costs,”.

30 **6 Subsection 67(10)**

31 After “pay”, insert “the whole or a part of”.

1 **7 After subsection 67(10)**

2 Insert:

3 (10A) In exercising a power conferred by subsection (8), (8A), (8B) or
4 (9), the Administrative Appeals Tribunal must comply with the
5 Schedule of Legal Costs.

6 (10B) If:

- 7 (a) a proceeding is instituted under this Part by the claimant; and
8 (b) the proceeding is dismissed under section 42B of the
9 *Administrative Appeals Tribunal Act 1975*;

10 the Administrative Appeals Tribunal may, on the application of
11 another party to the proceedings, order that the costs of the
12 proceeding incurred by the other party must be paid by the
13 claimant.

14 **8 At the end of Part VI**

15 Add:

16 **67A Schedule of Legal Costs**

17 (1) Comcare may, by legislative instrument, prescribe a Schedule of
18 Legal Costs that:

- 19 (a) provides that the amount paid under subsection 67(8) in
20 relation to a proceeding must not exceed the amount
21 specified in, or ascertained in accordance with, the Schedule
22 of Legal Costs; and
23 (b) provides that the amount paid under subsection 67(8A) in
24 relation to a proceeding must not exceed the amount
25 specified in, or ascertained in accordance with, the Schedule
26 of Legal Costs; and
27 (c) provides that the amount paid under subsection 67(8B) in
28 relation to a proceeding must not exceed the amount
29 specified in, or ascertained in accordance with, the Schedule
30 of Legal Costs; and
31 (d) provides that the amount paid under subsection 67(9) in
32 relation to a proceeding must not exceed the amount
33 specified in, or ascertained in accordance with, the Schedule
34 of Legal Costs.

Schedule 11 Legal costs

Part 1 Amendments

- 1 (2) The Schedule of Legal Costs may provide that the amount paid
2 under section 62A in relation to a reconsideration of a
3 determination must not exceed the amount specified in, or
4 ascertained in accordance with, the Schedule of Legal Costs.
- 5 (3) In exercising the power conferred by this section, Comcare must
6 comply with the regulations.
- 7 (4) Different amounts may be specified in, or ascertained in
8 accordance with, the Schedule of Legal Costs in different
9 circumstances.
- 10 (5) Those circumstances include the circumstance that:
11 (a) an agreement is reached between the parties to a proceeding,
12 or their representatives, as to the terms of the decision of the
13 Administrative Appeals Tribunal; and
14 (b) section 42C of the *Administrative Appeals Tribunal Act 1975*
15 applies to the agreement; and
16 (c) the agreement was reached as the result of a process set out
17 in the Schedule of Legal Costs.
- 18 (6) Subsection (5) does not limit subsection (4).
- 19 (7) Subsections (4), (5) and (6) do not limit subsection 33(3A) of the
20 *Acts Interpretation Act 1901*.
- 21 (8) Comcare must take all reasonable steps to ensure that a Schedule
22 of Legal Costs is in force at all times after the commencement of
23 this section.

1 **Part 2—Application provisions**

2 **9 Application of amendments**

3 (1) The amendment made by item 2 applies in relation to a decision made
4 after the commencement of this item.

5 (2) The amendments made by items 3, 4, 5, 6, 7 and 8 apply in relation to
6 proceedings instituted after the commencement of this item.

1 **Schedule 12—Permanent impairment**

2 **Part 1—Amendments**

3 *Safety, Rehabilitation and Compensation Act 1988*

4 **1 Subsection 4(1) (definition of *non-economic loss*)**

5 Repeal the definition.

6 **2 Subsection 13(1) (definition of *relevant amount*)**

7 Omit “27(2),”.

8 **3 At the end of subsection 24(1)**

9 Add:

10 Note: See also sections 28A, 28B and 28C.

11 **4 Subsection 24(3)**

12 After “(4)”, insert “or (4A)”.

13 **5 Subsection 24(4)**

14 Repeal the subsection, substitute:

15 (4) If the percentage determined by Comcare under subsection (5) is
16 75% or more, the amount assessed by Comcare is to be the
17 maximum amount.

18 (4A) If the percentage determined by Comcare under subsection (5) is
19 74% or less, the amount assessed by Comcare is to be the amount
20 worked out using the formula:

21
$$\text{Percentage determined by Comcare under subsection (5)} \times \text{Multiplying factor} \times \text{Maximum amount}$$

22 where:

23 *multiplying factor* is the multiplying factor specified in an item of
24 the table in clause 1 of Schedule 1 for the percentage determined
25 by Comcare under subsection (5).

1 **6 After subsection 24(8)**

2 Insert:

3 (8A) If, under section 28B, 2 or more injuries (the *individual injuries*)
4 to an employee are treated as a single injury, subsections (7), (7A)
5 and (8) do not apply to:

- 6 (a) any of those individual injuries; or
7 (b) the single injury.

8 (8B) Subject to section 25, if:

- 9 (a) under section 28B, 2 or more injuries to an employee are
10 treated as a single injury; and
11 (b) Comcare determines that the degree of permanent
12 impairment resulting from the single injury is less than 10%;
13 an amount of compensation is not payable to the employee under
14 this section.

15 **7 Subsection 24(9)**

16 Omit "\$80,000", substitute "\$350,000".

17 **8 After subsection 25(3)**

18 Insert:

19 (3A) Subsection (3) has effect subject to section 25A.

20 **9 At the end of section 25**

21 Add:

22 (6) If, under section 28B, 2 or more injuries (the *individual injuries*)
23 to an employee are treated as a single injury, subsections (4) and
24 (5) do not apply to:

- 25 (a) any of those individual injuries; or
26 (b) the single injury.

27 (7) If:

- 28 (a) under section 28B, 2 or more injuries to an employee are
29 treated as a single injury; and

- 1 (b) Comcare has made a final assessment of the degree of
2 permanent impairment of the employee resulting from the
3 single injury;
4 no further amounts of compensation are payable to the employee in
5 respect of a subsequent increase in the degree of impairment,
6 unless the increase is 10% or more.

7 **10 After section 25**

8 Insert:

9 **25A Reduction of compensation**

- 10 (1) If:
11 (a) Comcare has made a determination that an employee is
12 suffering from a permanent impairment as a result of an
13 injury; and
14 (b) an amount of compensation has been paid to the employee
15 following the making of the determination; and
16 (c) the employee subsequently makes a claim for compensation
17 under this Division in relation to the injury;
18 the amount of compensation payable to the employee under this
19 Division on the determination of the claim is to be reduced (but not
20 below zero) by the total amount of compensation previously paid
21 to the employee under this Division in respect of the injury.
- 22 (2) For the purposes of this section, if, under section 28B, 2 or more
23 injuries (the *individual injuries*) are treated as a single injury:
24 (a) a determination in relation to any of the individual injuries is
25 taken to be, and to have been, a determination in relation to
26 that single injury; and
27 (b) a claim for compensation in relation to any of the individual
28 injuries is taken to be, and to have been, a claim for
29 compensation in relation to that single injury; and
30 (c) compensation paid in respect of any of the individual injuries
31 is taken to be, and to have been, compensation paid in respect
32 of that single injury.

33 **11 Section 27**

34 Repeal the section.

1 **12 At the end of paragraph 28(1)(a)**

2 Add “and”.

3 **13 Paragraph 28(1)(b)**

4 Repeal the paragraph.

5 **14 Paragraph 28(1)(c)**

6 Omit “and the degree of non-economic loss”.

7 **15 After subsection 28(1)**

8 Insert:

9 (1A) A Guide prepared under subsection (1) may set out methods by
10 which the degree of permanent impairment resulting from an injury
11 (expressed as a percentage) is to be reduced on account of an
12 employee having a degree (the *pre-existing degree*) of permanent
13 impairment immediately before the injury.

14 (1B) If:

- 15 (a) there is a pre-existing degree of permanent impairment; and
16 (b) the pre-existing degree of permanent impairment cannot be
17 determined under the provisions of the Guide;

18 the degree of permanent impairment resulting from the injury is to
19 be reduced by 10%.

20 (1C) A Guide prepared under subsection (1) may set out:

- 21 (a) criteria by which a pre-existing degree of permanent
22 impairment is to be determined; and
23 (b) methods by which the pre-existing degree of permanent
24 impairment is to be expressed as a percentage.

25 (1D) A reduction mentioned in subsection (1A) may be a reduction to
26 0%.

27 (1E) For the purposes of subsection (1A), it is immaterial whether the
28 permanent impairment immediately before the injury is permanent
29 impairment for which compensation has been paid, or is payable,
30 under this Division.

1 **16 Subsection 28(4)**

2 Omit “or the degree of non-economic loss suffered by an employee,”.

3 **17 Subsection 28(5)**

4 Omit “or non-economic loss”.

5 **18 Subsection 28(6)**

6 Omit “paragraphs (1)(a) and (b)”, substitute “paragraph (1)(a)”.

7 **19 Subsection 28(6)**

8 Omit “, or non-economic loss resulting from the injury or impairment,”.

9 **20 At the end of Division 4 of Part II**

10 Add:

11 **28A Combined values—single injury**

12 If a single injury to an employee results in 2 or more permanent
13 impairments, this Division has effect subject to the following
14 modifications:

- 15 (a) first, work out the degree of permanent impairment for each
16 of those permanent impairments as if paragraph (b) had not
17 been enacted;
- 18 (b) second, the degree of the permanent impairment of the
19 employee resulting from that injury (expressed as a
20 percentage) is to be ascertained in accordance with the
21 combined values chart set out in the approved Guide by
22 applying the chart to the degrees worked out under
23 paragraph (a).

24 **28B Combined values—multiple injuries**

25 If the following conditions are satisfied in relation to 2 or more
26 injuries to an employee:

- 27 (a) each of those injuries is an associated injury in relation to
28 each other of those injuries;
- 29 (b) each of those injuries results in one or more permanent
30 impairments:

1 this Division has effect subject to the following modifications:

2 (c) first, work out the degree of permanent impairment for each
3 of those permanent impairments as if paragraph (d) had not
4 been enacted;

5 (d) second:

6 (i) those injuries are to be treated as a single injury; and

7 (ii) that single injury is taken to have resulted in each of
8 those permanent impairments; and

9 (iii) the degree of permanent impairment of the employee
10 resulting from that single injury (expressed as a
11 percentage) is to be ascertained in accordance with the
12 combined values chart set out in the approved Guide by
13 applying the chart to the degrees worked out under
14 paragraph (c).

15 Note: For *associated injury*, see section 6B.

16 **28C Psychological or psychiatric ailments etc. that are secondary**
17 **injuries**

18 For the purposes of this Division, if:

19 (a) an employee suffers an injury (the *primary injury*); and

20 (b) the primary injury results in another injury (the *secondary*
21 *injury*) to the employee; and

22 (c) the secondary injury is:

23 (i) a psychological or psychiatric ailment; or

24 (ii) an aggravation of a psychological or psychiatric
25 ailment; or

26 (iii) a psychological or psychiatric injury; or

27 (iv) an aggravation of a psychological or psychiatric injury;

28 then:

29 (d) this Division does not apply to the secondary injury; and

30 (e) for the purposes of this Division, disregard the secondary
31 injury in determining the degree of the permanent
32 impairment of the employee.

33 **21 Paragraph 45(1)(a)**

34 Omit “24, 25 or 27”, substitute “24 or 25”.

1 **22 Subsection 45(1)**

2 Omit “24, 25 or 27” (last occurring), substitute “24 or 25”.

3 **23 Paragraph 45(2)(b)**

4 Omit “24, 25 or 27”, substitute “24 or 25”.

5 **24 Subsection 55(4)**

6 Repeal the subsection.

7 **25 Subsection 60(1) (definition of *determination*)**

8 Omit “27,”.

9 **26 At the end of the Act**

10 Add:

11 **Schedule 1—Multiplying factors for**
12 **calculating compensation for injuries**
13 **resulting in permanent impairment**

14 Note: See subsection 24(4A).
15
16

17 **1 Multiplying factors**

18 For the purposes of subsection 24(4A), the following table is to be
19 used to work out the multiplying factor for a percentage
20 determined by Comcare under subsection 24(5):
21

Multiplying factors		
Item	Percentage	Multiplying factor
1	1%	0.16
2	2%	0.17
3	3%	0.18
4	4%	0.19
5	5%	0.2
6	6%	0.21

Multiplying factors		
Item	Percentage	Multiplying factor
7	7%	0.22
8	8%	0.23
9	9%	0.24
10	10%	0.25
11	11%	0.26
12	12%	0.27
13	13%	0.28
14	14%	0.29
15	15%	0.3
16	16%	0.31
17	17%	0.32
18	18%	0.33
19	19%	0.34
20	20%	0.35
21	21%	0.365
22	22%	0.38
23	23%	0.395
24	24%	0.41
25	25%	0.425
26	26%	0.44
27	27%	0.455
28	28%	0.47
29	29%	0.485
30	30%	0.5
31	31%	0.52
32	32%	0.54
33	33%	0.56
34	34%	0.58
35	35%	0.6
36	36%	0.62
37	37%	0.64

Schedule 12 Permanent impairment
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Multiplying factors		
Item	Percentage	Multiplying factor
38	38%	0.66
39	39%	0.68
40	40%	0.7
41	41%	0.73
42	42%	0.76
43	43%	0.79
44	44%	0.82
45	45%	0.85
46	46%	0.88
47	47%	0.91
48	48%	0.94
49	49%	0.97
50	50%	1
51	51%	1.014
52	52%	1.028
53	53%	1.042
54	54%	1.056
55	55%	1.07
56	56%	1.084
57	57%	1.098
58	58%	1.112
59	59%	1.126
60	60%	1.14
61	61%	1.154
62	62%	1.168
63	63%	1.182
64	64%	1.196
65	65%	1.21
66	66%	1.224
67	67%	1.238
68	68%	1.252

Multiplying factors		
Item	Percentage	Multiplying factor
69	69%	1.266
70	70%	1.28
71	71%	1.294
72	72%	1.308
73	73%	1.322
74	74%	1.336

1

1 **Part 2—Application and transitional provisions**

2 **27 Application of amendments**

3 The amendments made by this Schedule apply in relation to the
4 determination of a claim for compensation under Division 4 of Part II of
5 the *Safety, Rehabilitation and Compensation Act 1988* if the claim was
6 made after the commencement of this item.

7 **28 Transitional—claims**

8 *Scope*

9 (1) This item applies if, before the commencement of this item, an
10 employee made a claim (the *old claim*) for compensation under
11 Division 4 of Part II of the *Safety, Rehabilitation and Compensation Act*
12 *1988* in relation to an injury.

13 *New claim*

14 (2) After the commencement of this item, the employee is not entitled to
15 make a claim for compensation under Division 4 of Part II of the *Safety,*
16 *Rehabilitation and Compensation Act 1988* (as amended by this
17 Schedule) in relation to the injury unless:

- 18 (a) the old claim has been finally determined; and
19 (b) the employee gives the relevant authority a written
20 undertaking:
21 (i) not to make a request under section 62 of that Act to
22 reconsider the determination of the old claim; and
23 (ii) not to apply to the Administrative Appeal Tribunal for
24 review of a decision made under section 62 of that Act
25 as the result of a reconsideration of the determination of
26 the old claim; and
27 (iii) not to institute any proceedings in a court (other than the
28 High Court) in relation to the determination of the old
29 claim.

30 (3) The employee must comply with an undertaking given by the employee
31 under subitem (2).

32 (4) If:

- 1 (a) the employee gives an undertaking under subitem (2); and
2 (b) at or after the time when the undertaking was given, the
3 employee makes a claim (the *new claim*) for compensation
4 under Division 4 of Part II of the *Safety, Rehabilitation and*
5 *Compensation Act 1988* (as amended by this Schedule) in
6 relation to the injury mentioned in subitem (2); and
7 (c) the employee institutes proceedings in the High Court in
8 relation to the determination of the old claim mentioned in
9 subitem (2);
10 then:
11 (d) the relevant authority may defer considering and determining
12 the new claim until those proceedings have been finally
13 determined; and
14 (e) subsections 61(1A) to (1D) of the *Safety, Rehabilitation and*
15 *Compensation Act 1988* (as amended by this Act) do not
16 apply to the new claim.
- 17 (5) If:
18 (a) compensation under Division 4 of Part II of the *Safety,*
19 *Rehabilitation and Compensation Act 1988* was paid to the
20 employee as a result of the determination of the old claim;
21 and
22 (b) after the commencement of this item, the employee makes a
23 claim (the *new claim*) for compensation under Division 4 of
24 Part II of the *Safety, Rehabilitation and Compensation Act*
25 *1988* (as amended by this Schedule) in relation to the injury;
26 and
27 (c) the degree of permanent impairment is less than 10%;
28 compensation is not payable to the employee under that Division on the
29 determination of the new claim.
- 30 (6) If, after the commencement of this item, the employee makes a claim
31 for compensation under Division 4 of Part II of the *Safety,*
32 *Rehabilitation and Compensation Act 1988* (as amended by this
33 Schedule) in relation to the injury, the amount of compensation payable
34 to the employee under that Division on the determination of the claim is
35 to be reduced (but not below zero) by the total amount of compensation
36 previously paid to the employee under that Division (whether before or
37 after the commencement of this item) in respect of the injury.
-

Schedule 13—Licences

Safety, Rehabilitation and Compensation Act 1988

1 Subsection 4(10A)

Omit “a reference to that corporation”, substitute:
a reference to:

- (a) if that corporation is the licence holder of a single employer licence—that corporation; or
- (b) if that corporation is covered by a group employer licence—a corporation that is designated by the licence as a relevant authority for the licence.

2 At the end of subsection 4(10A)

Add:

Note: See also subsection 108AA(2) (liability accepted by a relevant authority on behalf of the corporations covered by a group employer licence).

3 After section 104A

Add:

104B Single employer licence granted to a corporation must authorise acceptance of liability and management of claims

A single employer licence granted to a corporation must:

- (a) authorise the licence holder, under section 108, to accept liability to pay compensation and other amounts under this Act in respect of:
 - (i) particular injury, loss or damage suffered by; or
 - (ii) the death of;
 - some or all of its employees; and
- (b) authorise the licence holder (or a person acting on the licence holder’s behalf), under section 108B, to manage some or all of the claims made by employees of the licence holder under this Act.

1 **104C Single employer licence granted to a Commonwealth authority**
2 **must authorise acceptance of liability or management of**
3 **claims, or both**

4 A single employer licence granted to a Commonwealth authority
5 must:

6 (a) authorise the licence holder, under section 108, to accept
7 liability to pay compensation and other amounts under this
8 Act in respect of:

9 (i) particular injury, loss or damage suffered by; or

10 (ii) the death of;

11 some or all of its employees; or

12 (b) authorise the licence holder (or a person acting on the licence
13 holder's behalf), under section 108B, to manage some or all
14 of the claims made by employees of the licence holder under
15 this Act;

16 or both.

17 **104D Group employer licence must authorise acceptance of liability**
18 **and management of claims**

19 A group employer licence must:

20 (a) authorise each relevant authority, under section 108AA, to
21 accept liability to pay compensation and other amounts under
22 this Act in respect of:

23 (i) particular injury, loss or damage suffered by; or

24 (ii) the death of;

25 some or all of the employees of the corporations that were
26 covered by the licence when the injury, loss, damage or death
27 occurred; and

28 (b) authorise each relevant authority (or a person acting on the
29 relevant authority's behalf), under section 108CA, to manage
30 some or all of the claims that the relevant authority is
31 authorised by the licence to accept.

32 **4 At the end of section 108D**

33 Add:

1 *Application of this Act*

2 (3) If a single employer licence is granted, the application of this Act
3 is subject to the conditions to which the licence is subject.

4 **5 At the end of section 108DA**

5 Add:

6 *Application of this Act*

7 (6) If a group employer licence is issued, the application of this Act is
8 subject to the conditions to which the licence is subject.

1 **Schedule 14—Gradual onset injuries**

2 **Part 1—General amendments**

3 *Safety, Rehabilitation and Compensation Act 1988*

4 **1 Subsection 4(1)**

5 Insert:

6 *contributory employment*, in relation to a gradual onset injury, has
7 the meaning given by section 7B.

8 *financial authority* responsible for a contributory employment,
9 when used in relation to a gradual onset injury, has the meaning
10 given by section 7B.

11 *gradual onset injury* has the meaning given by section 7B.

12 **2 Before section 8**

13 Insert:

14 **7B Gradual onset injury**

15 (1) For the purposes of this Act, a *gradual onset injury* is an injury
16 suffered by an employee, where:

17 (a) the injury is:

18 (i) a disease of gradual development; or

19 (ii) the result of a disease of gradual development; or

20 (b) the injury:

21 (i) results in a permanent impairment that is a hearing loss;
22 and

23 (ii) is caused by a gradual process.

24 *Contributory employment and financial authority*

25 (2) For the purposes of the application of this Act to a gradual onset
26 injury suffered by an employee, if the injury was contributed to, to
27 a significant degree, by:

28 (a) the employee's employment by an Entity; or

- 1 (b) the employee’s employment by a Commonwealth authority
2 (other than a licensed authority); or
3 (c) the employee’s employment by a licensee;
4 then:
5 (d) the employment is a *contributory employment*; and
6 (e) if paragraph (a) or (b) applies—Comcare is the *financial*
7 *authority* responsible for the contributory employment; and
8 (f) if paragraph (c) applies—the licensee is the *financial*
9 *authority* responsible for the contributory employment.
- 10 (3) Subsection (2) of this section does not apply to section 35.

11 **3 After subsection 97A(1)**

12 Insert:

- 13 (1A) In determining the amount of the premium payable by an Entity or
14 Commonwealth authority in respect of a financial year under
15 section 97, Comcare may have regard to the principle that, in the
16 case of a gradual onset injury that has 2 or more contributory
17 employments, the premium burden attributable to that injury
18 should be shared among Entities and Commonwealth authorities
19 according to the proportion of the contribution to the gradual onset
20 injury made by those contributory employments.

21 **4 After Division 5 of Part VIII**

22 Insert:

23 **Division 5A—Gradual onset injuries**

24 **108DB Application of this Division**

25 *Scope*

- 26 (1) This Division applies to:
27 (a) a gradual onset injury suffered by an employee; or
28 (b) an associated injury;
29 if:
30 (c) there are 2 or more contributory employments; and

1 (d) at least one of those contributory employments is
2 employment by a licensed corporation.

3 Note 1: For *associated injury*, see section 6B.

4 Note 2: For *contributory employment*, see section 7B.

5 *Most recent contributory employment*

6 (2) For the purposes of the application of this Division to a gradual
7 onset injury, the most recent contributory employment is to be
8 ascertained as at the time when the gradual onset injury was
9 notified under section 53.

10 **108DC Liability of Comcare**

11 (1) Comcare is not liable to pay compensation or other amounts under
12 this Act in respect of a gradual onset injury or associated injury
13 unless the most recent contributory employment was:

14 (a) employment by an Entity; or

15 (b) employment by a Commonwealth authority (other than a
16 licensed authority).

17 (2) Subsection (1) does not apply to a liability under section 108DF.

18 **108DD Liability of a licensee**

19 (1) A licensee is not liable to pay compensation or other amounts
20 under this Act in respect of a gradual onset injury or associated
21 injury unless the most recent contributory employment was
22 employment by the licensee.

23 (2) Subsection (1) does not apply to a liability under section 108DF.

24 **108DF Shared liability**

25 *Scope*

26 (1) This section applies if:

27 (a) there is a gradual onset injury or associated injury; and

28 (b) a financial authority (the *first financial authority*)
29 responsible for a contributory employment has paid
30 compensation or another amount under this Act (other than

- 1 this section) in respect of the gradual onset injury or
2 associated injury; and
3 (c) another financial authority is responsible for another
4 contributory employment.

5 *Recovery of part of compensation from the other financial*
6 *authority*

- 7 (2) The first financial authority and the other financial authority may
8 enter into an agreement under which the other financial authority
9 reimburses a part of the compensation or other amount paid by the
10 first financial authority.
- 11 (3) If the first financial authority and the other financial authority do
12 not enter into an agreement under subsection (2):
- 13 (a) the other financial authority is liable to pay to the first
14 financial authority an amount equal to the compensation or
15 other amount paid by the first financial authority multiplied
16 by the proportion of the contribution to the gradual onset
17 injury made by the other contributory employment; and
- 18 (b) an amount payable under paragraph (a) may be recovered by
19 the first financial authority by action in a court of competent
20 jurisdiction.

21 *Payments to the other financial authority*

- 22 (4) If the first financial authority has received an amount under
23 section 48, 50, 50A, 113, 114, 118 or 119 in relation to the gradual
24 onset injury or associated injury:
- 25 (a) the first financial authority must:
- 26 (i) pay to the other financial authority an amount equal to
27 the amount received multiplied by the proportion of the
28 contribution to the gradual onset injury made by the
29 other contributory employment; and
- 30 (ii) do so within 30 days after receiving the amount; and
- 31 (b) an amount payable under paragraph (a) may be recovered by
32 the other financial authority by action in a court of competent
33 jurisdiction.
- 34 (5) If an amount payable by the first financial authority under
35 subsection (4) remains unpaid after the end of that 30-day period:

Schedule 14 Gradual onset injuries

Part 1 General amendments

- 1 (a) the first financial authority is liable to pay to the other
2 financial authority, by way of penalty, an amount calculated,
3 at the percentage rate specified in the regulations, on the
4 amount unpaid, computed from the end of that 30-day period;
5 and
6 (b) an amount payable under paragraph (a) may be recovered by
7 the other financial authority by action in a court of competent
8 jurisdiction.
- 9 (6) An amount payable by the other financial authority under
10 subsection (3) is to be reduced by an amount paid to the other
11 financial authority under subsection (4).

12 **108DG Constitutional limits**

- 13 (1) This Division has no effect to the extent (if any) to which it
14 imposes taxation.
- 15 (2) This Division has no effect to the extent (if any) to which its
16 operation would result in an acquisition of property (within the
17 meaning of paragraph 51(xxxi) of the Constitution) otherwise than
18 on just terms (within the meaning of that paragraph).

1 **Part 2—Amendments contingent on the**
2 **commencement of Schedule 2 to the Safety,**
3 **Rehabilitation and Compensation**
4 **Legislation Amendment Act 2015**

5 *Safety, Rehabilitation and Compensation Act 1988*

6 **5 Paragraph 7B(2)(c)**

7 Omit “a licensee;”, substitute “the licence holder of a single employer
8 licence; or”.

9 **6 After paragraph 7B(2)(c)**

10 Insert:

11 (ca) the employee’s employment by a corporation covered by a
12 group employer licence;

13 **7 Paragraph 7B(2)(f)**

14 Omit “licensee”, substitute “licence holder”.

15 **8 At the end of subsection 7B(2)**

16 Add:

17 ; and (g) if paragraph (ca) applies—the corporations covered by the
18 licence are the *financial authority* responsible for the
19 contributory employment.

20 **9 At the end of section 7B**

21 Add:

22 (4) For the purposes of subsection (2), *corporation* has the same
23 meaning as in Part VIII.

24 **10 Paragraph 108DB(1)(d)**

25 Repeal the paragraph, substitute:

26 (d) at least one of those contributory employments is:

27 (i) employment by the licence holder of a single employer
28 licence; or

Schedule 14 Gradual onset injuries

Part 2 Amendments contingent on the commencement of Schedule 2 to the Safety, Rehabilitation and Compensation Legislation Amendment Act 2015

- 1 (ii) employment by a corporation covered by a group
2 employer licence.

3 **11 Section 108DD (heading)**

4 Repeal the heading, substitute:

5 **108DD Liability of the licence holder of a single employer licence**

6 **12 Subsection 108DD(1)**

7 Omit “A licensee”, substitute “The licence holder of a single employer
8 licence”.

9 **13 Subsection 108DD(1)**

10 Omit “by the licensee”, substitute “by the licence holder”.

11 **14 After section 108DD**

12 Insert:

13 **108DE Liability of the corporations covered by a group employer
14 licence**

15 (1) The corporations covered by a group employer licence are not
16 liable to pay compensation or other amounts under this Act in
17 respect of a gradual onset injury or related death unless the most
18 recent contributory employment was employment by one of those
19 corporations.

20 (2) Subsection (1) does not apply to a liability under section 108DF.

21 **15 At the end of section 108DF**

22 Add:

23 *Group employer licence*

24 (7) If the other financial authority consists of the corporations covered
25 by a group employer licence, those corporations are jointly and
26 severally liable to pay an amount payable by the other financial
27 authority under subsection (3).

- 1 (8) If the first financial authority consists of the corporations covered
2 by a group employer licence, those corporations are jointly and
3 severally liable to pay an amount payable by the first financial
4 authority under subsection (4).

1 **Part 2—Amendments commencing on Proclamation**

2 **Division 1—Amendments**

3 *Safety, Rehabilitation and Compensation Act 1988*

4 **6 Subsection 4(1)**

5 Insert:

6 *breach of an obligation of mutuality* means an act or omission that
7 is declared by this Act to be a breach of an obligation of mutuality.

8 *cancellation regime*: see section 29Z.

9 *legally qualified psychologist* means a person registered under a
10 Health Practitioner Regulation National Law in the psychology
11 profession (other than as a student).

12 *level 1 sanctions regime*: see section 29W.

13 *level 2 sanctions regime*: see section 29X.

14 *qualifying occasion* has the meaning given by section 29ZD.

15 **7 Subsections 4(10) and (10A)**

16 Before “Part III”, insert “section 29H or”.

17 **8 Paragraph 29G(1)(b)**

18 Omit “an employee or dependant”, substitute “a dependant”.

19 **9 Subsection 29G(1)**

20 Omit “the employee or dependant” (wherever occurring), substitute “the
21 dependant”.

22 **10 Subsection 29G(2)**

23 Repeal the subsection.

24 **11 After section 29G**

25 Insert:

1 **29H Confirmation diagnosis not obtained for a psychological or**
2 **psychiatric ailment or injury**

3 (1) If:

4 (a) an employee is incapacitated for work as a result of an injury
5 that is:

6 (i) a psychological or psychiatric ailment; or

7 (ii) an aggravation of a psychological or psychiatric
8 ailment; or

9 (iii) a psychological or psychiatric injury; or

10 (iv) an aggravation of a psychological or psychiatric injury;
11 and

12 (b) the employee makes a claim for compensation in relation to
13 the injury; and

14 (c) the employee's claim is not accompanied by a certificate by a
15 mental health practitioner;

16 the employee must:

17 (d) both:

18 (i) undergo an examination by a mental health practitioner;
19 and

20 (ii) give the relevant authority a certificate by the mental
21 health practitioner; and

22 (e) do so within 12 weeks after the employee makes the claim.

23 *Suspension of compensation*

24 (2) If an employee refuses or fails, without reasonable excuse, to
25 comply with subsection (1), the employee's rights:

26 (a) to compensation under section 19, 20, 21, 21A, 22 or 31 in
27 relation to the injury; and

28 (b) to institute or continue any proceedings under this Act in
29 relation to compensation under section 19, 20, 21, 21A, 22 or
30 31 in relation to the injury;

31 are suspended until the employee:

32 (c) undergoes an examination by a mental health practitioner;
33 and

34 (d) gives the relevant authority a certificate by the mental health
35 practitioner.

Schedule 15 Sanctions

Part 2 Amendments commencing on Proclamation

1 (3) If an employee's right to compensation is suspended under
2 subsection (2), compensation is not payable in respect of the period
3 of the suspension.

4 *Cost of examination etc.*

5 (4) The relevant authority is liable to pay:
6 (a) the cost of conducting an examination mentioned in
7 paragraph (1)(d) or (2)(c); and
8 (b) an amount equal to the amount of the expenditure reasonably
9 incurred by the employee:
10 (i) in making a necessary journey in connection with the
11 examination; or
12 (ii) in remaining, for the purposes of the examination, at a
13 place to which the employee has made a journey for that
14 purpose.

15 (5) The matters to which the relevant authority is to have regard in
16 deciding questions arising under paragraph (4)(b) include:
17 (a) the means of transport available to the employee for the
18 journey; and
19 (b) the route or routes by which the employee could have
20 travelled; and
21 (c) the accommodation available to the employee.

22 *Mental health practitioner*

23 (6) For the purposes of this section, **mental health practitioner** means:
24 (a) a legally qualified medical practitioner who is registered
25 under a Health Practitioner Regulation National Law in the
26 speciality of psychiatry (other than as a student); or
27 (b) a legally qualified psychologist who is registered under a
28 Health Practitioner Regulation National Law in the speciality
29 of clinical psychology (other than as a student); or
30 (c) a legally qualified medical practitioner who has completed
31 mental health training, where the training was covered by an
32 approval under subsection (7).

33 (7) For the purposes of paragraph (6)(c), Comcare may, by writing,
34 approve specified mental health training.

1 (8) An approval under subsection (7) is not a legislative instrument.

2 *Other matters*

3 (9) For the purposes of this section, *certificate* means a certificate in
4 accordance with the form approved by Comcare for the purposes of
5 paragraph 54(2)(b).

6 **12 Subsection 29J(1)**

7 After “claimant for compensation”, insert “(other than an employee)”.

8 **13 Subsection 29J(2)**

9 Repeal the subsection.

10 **14 Before Division 6 of Part II**

11 Insert:

12 **Division 5B—Obligations of mutuality**

13 **Subdivision A—Breach of obligation of mutuality**

14 **29L Suitable employment**

15 *Failure to accept offer of suitable employment*

16 (1) If:

- 17 (a) payments of compensation under section 19, 20, 21, 21A or
18 31 are being made to an employee because the employee is
19 incapacitated for work because of an injury; and
20 (b) the employee has the potential to be in suitable employment;
21 and
22 (c) the employee received an offer of suitable employment; and
23 (d) the employee failed to accept that offer; and
24 (e) the employee did not have a reasonable excuse for the failure
25 to accept that offer;

26 then:

- 27 (f) the employee’s failure to accept that offer is a breach of an
28 obligation of mutuality; and
29 (g) the breach is taken to be in connection with:

Schedule 15 Sanctions

Part 2 Amendments commencing on Proclamation

- 1 (i) the injury; and
2 (ii) each associated injury.

3 Note: For *associated injury*, see section 6B.

- 4 (2) Subsection (1) does not apply in such circumstances as are set out
5 in the regulations.

6 *Failure to engage, or to continue to engage, in suitable*
7 *employment*

- 8 (3) If:

- 9 (a) payments of compensation under section 19, 20, 21, 21A or
10 31 are being made to an employee because the employee is
11 incapacitated for work because of an injury; and
12 (b) the employee has the potential to be in suitable employment;
13 and
14 (c) the employee received an offer of suitable employment; and
15 (d) having accepted that offer, the employee failed to engage, or
16 to continue to engage, in that employment; and
17 (e) the employee did not have a reasonable excuse for the failure
18 to engage, or to continue to engage, in that employment;

19 then:

- 20 (f) the employee's failure to engage, or to continue to engage, in
21 that employment is a breach of an obligation of mutuality;
22 and
23 (g) the breach is taken to be in connection with:
24 (i) the injury; and
25 (ii) each associated injury.

26 Note: For *associated injury*, see section 6B.

- 27 (4) Subsection (3) does not apply in such circumstances as are set out
28 in the regulations.

29 *Failure to seek suitable employment*

- 30 (5) If:

- 31 (a) payments of compensation under section 19, 20, 21, 21A or
32 31 are being made to an employee because the employee is
33 incapacitated for work because of an injury; and
-

- 1 (b) the employee has the potential to be in suitable employment;
2 and
3 (c) the employee failed to seek suitable employment; and
4 (d) the employee did not have a reasonable excuse for the failure
5 to seek suitable employment;
6 then:
7 (e) the employee's failure to seek suitable employment is a
8 breach of an obligation of mutuality; and
9 (f) the breach is taken to be in connection with:
10 (i) the injury; and
11 (ii) each associated injury.

12 Note: For *associated injury*, see section 6B.

- 13 (6) Subsection (5) does not apply in such circumstances as are set out
14 in the regulations.

15 *Potential to be in suitable employment*

- 16 (7) For the purposes of this section, the potential of an employee to be
17 in suitable employment is to be ascertained having regard to:
18 (a) the potential of the employee to be rehabilitated; and
19 (b) the potential of the employee to benefit from medical
20 treatment; and
21 (c) any other relevant matters.

22 **29M Medical examination**

- 23 If:
24 (a) an employee is required to undergo an examination under
25 subsection 57(1); and
26 (b) the employee:
27 (i) refuses or fails, without reasonable excuse, to undergo
28 the examination; or
29 (ii) in any way obstructs the examination;
30 then:
31 (c) the employee's refusal or failure, or obstruction, as the case
32 may be, is a breach of an obligation of mutuality; and
33 (d) the breach is taken to be in connection with:

- 1 (i) the injury to which the examination relates; and
2 (ii) each associated injury.

3 Note: For *associated injury*, see section 6B.

4 **29N Employee absent from work without a medical certificate etc.**

5 *Scope*

- 6 (1) This section applies to an employee if:
7 (a) payments of compensation under section 19, 20, 21, 21A, 22
8 or 31 are being made to the employee because the employee
9 is incapacitated for work because of an injury; and
10 (b) the employee is in suitable employment; and
11 (c) under the terms and conditions of the suitable employment,
12 the employee is required to produce a medical certificate that
13 covers an absence of the employee from work; and
14 (d) the employee refuses or fails, without reasonable excuse, to
15 produce the certificate:
16 (i) within the period allowed under the terms and
17 conditions of the suitable employment; or
18 (ii) if the terms and conditions of the suitable employment
19 do not specify a period within which the certificate must
20 be produced—as soon as reasonably practicable.

21 *Breach of obligation of mutuality*

- 22 (2) The following provisions have effect:
23 (a) the employee's refusal or failure to produce the certificate is
24 a breach of an obligation of mutuality;
25 (b) the breach is taken to be in connection with:
26 (i) the injury mentioned in paragraph (1)(a); and
27 (ii) each associated injury.

28 Note: For *associated injury*, see section 6B.

29 *Medical certificate*

- 30 (3) For the purposes of this section, *medical certificate* means a
31 certificate issued by a legally qualified medical practitioner or a
32 legally qualified dentist.

1 **29P Employee does not follow medical treatment advice**

2 *Scope*

- 3 (1) This section applies if:
- 4 (a) payments of compensation under section 19, 20, 21, 21A, 22
5 or 31 are being made to an employee because the employee is
6 incapacitated for work as a result of an injury; and
- 7 (b) the employee has received medical treatment advice from a
8 legally qualified medical practitioner or a legally qualified
9 dentist; and
- 10 (c) the medical treatment advice is reasonable; and
- 11 (d) the employee refuses or fails, without reasonable excuse, to
12 follow the medical treatment advice:
- 13 (i) if the advice specifies a period within which the advice
14 should be followed—within that period; or
- 15 (ii) otherwise—as soon as reasonably practicable.

16 *Breach of obligation of mutuality*

- 17 (2) The following provisions have effect:
- 18 (a) the employee's refusal or failure to follow the medical
19 treatment advice is a breach of an obligation of mutuality;
- 20 (b) the breach is taken to be in connection with:
- 21 (i) the injury mentioned in paragraph (1)(a); and
- 22 (ii) each associated injury.

23 Note: For *associated injury*, see section 6B.

24 *Reasonable excuse*

- 25 (3) For the purposes of this section, it is a reasonable excuse if:
- 26 (a) the employee defers following the medical treatment advice
27 mentioned in paragraph (1)(b) for a reasonable period; and
- 28 (b) the employee does so in order to obtain a second opinion
29 from another legally qualified medical practitioner or another
30 legally qualified dentist.
- 31 (4) For the purposes of this section, it is a reasonable excuse if the
32 employee:

- 1 (a) receives medical treatment advice from another legally
2 qualified medical practitioner or another legally qualified
3 dentist; and
4 (b) follows the medical treatment advice given by the other
5 legally qualified medical practitioner or the other legally
6 qualified dentist, as the case may be; and
7 (c) disregards the medical treatment advice mentioned in
8 paragraph (1)(b).

- 9 (5) For the purposes of this section, it is a reasonable excuse if:
10 (a) the employee refuses to undergo surgery; or
11 (b) the employee refuses to take or use a medicine.

12 *Medical treatment advice*

- 13 (6) For the purposes of this section, **medical treatment advice** means
14 advice to do either or both of the following:
15 (a) to obtain one or more items of medical treatment in relation
16 to the injury mentioned in paragraph (1)(a);
17 (b) to engage in conduct that is incidental to obtaining any or all
18 of those items of medical treatment.

19 *Incidental conduct*

- 20 (7) For the purposes of this section, if a person engages in conduct that
21 is:
22 (a) preparatory to an item of medical treatment; or
23 (b) ancillary to an item of medical treatment; or
24 (c) otherwise directed towards ensuring that the person derives
25 the full benefit of an item of medical treatment;
26 the conduct is taken to be incidental to obtaining the item of
27 medical treatment.

28 *Engage in conduct*

- 29 (8) For the purposes of this section, **engage in conduct** means:
30 (a) do an act; or
31 (b) omit to perform an act.

1 **29Q Assessment of need for household services and attendant care**
2 **services**

3 If an employee:

- 4 (a) refuses or fails, without reasonable excuse, to undergo an
5 assessment in accordance with a requirement under
6 subsection 29B(1); or
7 (b) in any way obstructs such an assessment;

8 then:

- 9 (c) the employee's refusal or failure, or obstruction, as the case
10 may be, is a breach of an obligation of mutuality; and
11 (d) the breach is taken to be in connection with:
12 (i) the injury to which the assessment relates; and
13 (ii) each associated injury.

14 Note: For *associated injury*, see section 6B.

15 **29R Workplace rehabilitation plan**

16 If an employee refuses or fails, without reasonable excuse, to fulfil
17 the employee's responsibilities under a workplace rehabilitation
18 plan for the employee in relation to an injury, then:

- 19 (a) the employee's refusal or failure to fulfil those
20 responsibilities is a breach of an obligation of mutuality; and
21 (b) the breach is taken to be in connection with:
22 (i) the injury; and
23 (ii) each associated injury.

24 Note: For *associated injury*, see section 6B.

25 **29S Work readiness assessment**

26 If:

- 27 (a) an employee is required under section 38B to undergo a work
28 readiness assessment because the employee has suffered an
29 injury resulting in an incapacity for work; and
30 (b) the employee:
31 (i) refuses or fails, without reasonable excuse, to undergo
32 the assessment; or
33 (ii) in any way obstructs the assessment;
-

- 1 then:
2 (c) the employee's refusal or failure, or obstruction, as the case
3 may be, is a breach of an obligation of mutuality; and
4 (d) the breach is taken to be in connection with:
5 (i) the injury; and
6 (ii) each associated injury.

7 Note: For *associated injury*, see section 6B.

8 **29T Information notices**

- 9 (1) If an employee refuses or fails, without reasonable excuse, to
10 comply with a notice under subsection 58(1) that relates to a claim
11 made by the employee:
12 (a) the employee's refusal or failure to comply with the notice is
13 a breach of an obligation of mutuality; and
14 (b) the breach is taken to be in connection with:
15 (i) the injury to which the claim relates; and
16 (ii) each associated injury.

17 Note: For *associated injury*, see section 6B.

- 18 (2) If an employee refuses or fails, without reasonable excuse, to
19 comply with a notice under subsection 120A(1), then:
20 (a) the employee's refusal or failure to comply with the notice is
21 a breach of an obligation of mutuality; and
22 (b) the breach is taken to be in connection with:
23 (i) the injury to which the notice relates; and
24 (ii) each associated injury.

25 Note: For *associated injury*, see section 6B.

26 **29U Requirement for the purposes of a common law claim against a**
27 **third party**

- 28 If:
29 (a) a claim is made, or the conduct of a claim is taken over,
30 under section 50; and
31 (b) an employee is subject to a requirement under
32 subsection 50(5) for the purposes of the claim; and

- 1 (c) the employee refuses or fails, without reasonable excuse, to
2 comply with such a requirement;
3 then:
4 (d) the employee's refusal or failure to comply with the
5 requirement is a breach of an obligation of mutuality; and
6 (e) the breach is taken to be in connection with:
7 (i) the injury to which the claim relates; and
8 (ii) each associated injury.

9 Note: For *associated injury*, see section 6B.

10 **29V Requirement to give a statutory declaration**

- 11 If:
12 (a) an employee is subject to a requirement under
13 subsection 118(3) to give a statutory declaration in relation to
14 a claim; and
15 (b) the employee refuses or fails, without reasonable excuse, to
16 comply with such a requirement;
17 then:
18 (c) the employee's refusal or failure to comply with the
19 requirement is a breach of an obligation of mutuality; and
20 (d) the breach is taken to be in connection with:
21 (i) the injury to which the claim relates; and
22 (ii) each associated injury.

23 Note: For *associated injury*, see section 6B.

24 **Subdivision B—Sanctions**

25 **29W Level 1 sanctions regime**

- 26 (1) If:
27 (a) at a particular time, the relevant authority is satisfied that,
28 during the 12-month period ending at that time, there was a
29 qualifying occasion on which an employee breached an
30 obligation of mutuality in relation to an injury; and
31 (b) the employee is not subject to the level 2 sanctions regime in
32 relation to:
33 (i) the injury mentioned in paragraph (a); or
-

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- 1 (ii) an associated injury; and
2 (c) the employee is not subject to the cancellation regime in
3 relation to:
4 (i) the injury mentioned in paragraph (a); or
5 (ii) an associated injury; and
6 (d) the employee is not already subject to the level 1 sanctions
7 regime in relation to:
8 (i) the injury mentioned in paragraph (a); or
9 (ii) an associated injury;
10 the relevant authority must, by written notice given to the
11 employee:
12 (e) determine that the employee is subject to the level 1
13 sanctions regime in relation to:
14 (i) the injury mentioned in paragraph (a); and
15 (ii) each associated injury; and
16 (f) if:
17 (i) the breach is not covered by section 29L; and
18 (ii) the breach has not stopped;
19 determine that, if the breach continues for longer than the
20 specified number of days after the notice was given, the time
21 immediately after the end of that specified number of days
22 will be treated as a separate qualifying occasion on which the
23 employee breaches an obligation of mutuality in relation to
24 the injury mentioned in paragraph (a).
25 Note 1: For *associated injury*, see section 6B.
26 Note 2: For *qualifying occasion*, see section 29ZD.
27 (2) For the purposes of subparagraph (1)(e)(ii), it is immaterial
28 whether an associated injury is sustained after the determination
29 was made.
30 (3) The number of days specified under paragraph (1)(f) must be 30 or
31 more.
32 (4) A determination under subsection (1) must be accompanied by a
33 statement that:
34 (a) sets out the nature, and brief details, of the breach; and
35 (b) explains the consequences of the determination; and
-

- 1 (c) sets out the effect of sections 29X, 29Y, 29Z and 29ZA; and
2 (d) if the breach is covered by section 29L—sets out the effect of
3 subsections 19(2), (2A), (2B) and (4); and
4 (e) if:
5 (i) the breach is not covered by section 29L; and
6 (ii) the breach has not stopped;
7 sets out the action that the employee should take in order to
8 stop the breach; and
9 (f) if:
10 (i) the breach is not covered by section 29L; and
11 (ii) the breach has stopped;
12 sets out the date when the breach stopped; and
13 (g) sets out such other matters (if any) as are specified in the
14 regulations.
- 15 (5) A determination under subsection (1):
16 (a) comes into force at a time specified in the determination; and
17 (b) remains in force until the employee becomes subject to the
18 level 2 sanctions regime.
- 19 (6) The time specified under paragraph (5)(a):
20 (a) must not be earlier than immediately after the occasion
21 mentioned in paragraph (1)(a); and
22 (b) must not be later than the day on which the determination is
23 given to the employee.

24 **29X Level 2 sanctions regime**

- 25 (1) If:
26 (a) at a particular time, the relevant authority is satisfied that,
27 during the 12-month period ending at that time, there was a
28 qualifying occasion on which an employee breached an
29 obligation of mutuality in relation to an injury; and
30 (b) the qualifying occasion occurred when the employee was
31 subject to the level 1 sanctions regime in relation to:
32 (i) the injury mentioned in paragraph (a); or
33 (ii) an associated injury; and

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- 1 (c) the employee is not subject to the cancellation regime in
2 relation to:
- 3 (i) the injury mentioned in paragraph (a); or
4 (ii) an associated injury; and
- 5 (d) the employee is not already subject to the level 2 sanctions
6 regime in relation to:
- 7 (i) the injury mentioned in paragraph (a); or
8 (ii) an associated injury;
- 9 the relevant authority must, by written notice given to the
10 employee:
- 11 (e) determine that the employee is subject to the level 2
12 sanctions regime in relation to:
- 13 (i) the injury mentioned in paragraph (a); and
14 (ii) each associated injury; and
- 15 (f) if:
- 16 (i) the breach is not covered by section 29L; and
17 (ii) the breach has not stopped;
- 18 determine that, if the breach continues for longer than the
19 specified number of days after the notice was given, the time
20 immediately after the end of that specified number of days
21 will be treated as a separate qualifying occasion on which the
22 employee breaches an obligation of mutuality in relation to
23 the injury mentioned in paragraph (a).
- 24 Note 1: For *associated injury*, see section 6B.
25 Note 2: For *qualifying occasion*, see section 29ZD.
- 26 (2) For the purposes of subparagraph (1)(e)(ii), it is immaterial
27 whether an associated injury is sustained after the determination
28 was made.
- 29 (3) The number of days specified under paragraph (1)(d) must be 30 or
30 more.
- 31 (4) A determination under subsection (1) must be accompanied by a
32 statement that:
- 33 (a) sets out the nature, and brief details, of the breach; and
34 (b) explains the consequences of the determination; and
35 (c) sets out the effect of sections 29Y, 29Z and 29ZA; and
-

- 1 (d) if the breach is covered by section 29L—sets out the effect of
2 subsections 19(2), (2A), (2B) and (4); and
3 (e) if:
4 (i) the breach is not covered by section 29L; and
5 (ii) the breach has not stopped;
6 sets out the action that the employee should take in order to
7 stop the breach; and
8 (f) if:
9 (i) the breach is not covered by section 29L; and
10 (ii) the breach has stopped;
11 sets out the date when the breach stopped; and
12 (g) sets out such other matters (if any) as are specified in the
13 regulations.
- 14 (5) A determination under subsection (1):
15 (a) comes into force at a time specified in the determination; and
16 (b) remains in force until the employee becomes subject to the
17 cancellation regime.
- 18 (6) The time specified under paragraph (5)(a):
19 (a) must not be earlier than immediately after the occasion
20 mentioned in paragraph (1)(a); and
21 (b) must not be later than the day on which the determination is
22 given to the employee.

23 **29Y Suspension of compensation—employee subject to the level 1**
24 **sanctions regime or the level 2 sanctions regime**

- 25 (1) If:
26 (a) an employee is subject to the level 1 sanctions regime, or the
27 level 2 sanctions regime, in relation to an injury; and
28 (b) the employee is in breach of an obligation of mutuality in
29 relation to the injury; and
30 (c) the breach is not covered by section 29L;
31 the employee's rights:
32 (d) to compensation under this Act; and
33 (e) to institute or continue any proceedings under this Act in
34 relation to compensation;
-

- 1 are suspended so far as those rights relate to the injury.
- 2 (2) However, subsection (1) does not operate to suspend:
- 3 (a) the employee's right to compensation for the cost of medical
- 4 treatment that is payable under section 16; or
- 5 (b) the employee's right to institute or continue proceedings by
- 6 way of an application to the Administrative Appeals Tribunal
- 7 for review of a reviewable decision that was made as the
- 8 result of a reconsideration of a decision under this Division.
- 9 (3) If an employee's right to compensation is suspended under
- 10 subsection (1), compensation in relation to the injury is not payable
- 11 in respect of the period of the suspension.

12 **29Z Cancellation regime**

- 13 (1) If:
- 14 (a) at a particular time, the relevant authority is satisfied that,
- 15 during the 12-month period ending at that time, there was a
- 16 qualifying occasion on which an employee breached an
- 17 obligation of mutuality in relation to an injury; and
- 18 (b) the qualifying occasion occurred when the employee was
- 19 subject to the level 2 sanctions regime in relation to:
- 20 (i) the injury mentioned in paragraph (a); or
- 21 (ii) an associated injury; and
- 22 (c) the employee is not already subject to the cancellation regime
- 23 in relation to:
- 24 (i) the injury mentioned in paragraph (a); or
- 25 (ii) an associated injury;
- 26 the relevant authority must, by written notice given to the
- 27 employee, determine that the employee is subject to the
- 28 cancellation regime in relation to:
- 29 (d) the injury mentioned in paragraph (a); and
- 30 (e) each associated injury.
- 31 Note 1: For *associated injury*, see section 6B.
- 32 Note 2: For *qualifying occasion*, see section 29ZD.
- 33 (2) For the purposes of paragraph (1)(e), it is immaterial whether an
- 34 associated injury is sustained after the determination was made.

- 1 (3) A determination under subsection (1) comes into force at a time
2 specified in the determination.
- 3 (4) The specified time:
4 (a) must not be earlier than the qualifying occasion mentioned in
5 paragraph (1)(a); and
6 (b) must not be later than the day on which the determination is
7 given to the employee.
- 8 (5) A determination under subsection (1) is irrevocable.
- 9 (6) Subsection (5) does not apply to a revocation under
10 subsection 62(5).

11 **29ZA Cancellation of compensation—employee subject to**
12 **cancellation regime**

- 13 (1) If an employee is subject to the cancellation regime in relation to
14 an injury, the employee's rights:
15 (a) to compensation under this Act; and
16 (b) to institute or continue any proceedings under this Act in
17 relation to compensation;
18 are cancelled so far as those rights relate to the injury.
- 19 (2) However, subsection (1) does not operate to cancel the employee's
20 right to institute or continue proceedings by way of an application
21 to the Administrative Appeals Tribunal for review of a reviewable
22 decision that was made as the result of a reconsideration of a
23 decision under this Division.
- 24 (3) To avoid doubt, this section does not affect compensation under
25 section 17 or 18.
- 26 (4) For the purposes of section 44, disregard this section.

27 **29ZB Liable employer to inform relevant authority of breach of**
28 **obligation of mutuality**

- 29 If:
30 (a) an employee is incapacitated for work because of an injury;
31 and
-

- 1 (b) the liable employer of the employee in relation to the injury
2 is not the relevant authority; and
- 3 (c) after the commencement of Part 1 of Schedule 2 to the
4 *Safety, Rehabilitation and Compensation Amendment*
5 *(Improving the Comcare Scheme) Act 2015*, the liable
6 employer becomes aware of a breach by the employee of an
7 obligation of mutuality;
- 8 the liable employer must:
- 9 (d) inform the relevant authority of the breach; and
- 10 (e) do so as soon as practicable after becoming aware of the
11 breach.

12 **29ZC Recovery of overpayments**

- 13 For the purposes of paragraph 114(1)(b), if:
- 14 (a) a determination was made under subsection 29W(1), 29X(1)
15 or 29Z(1); and
- 16 (b) the determination came into force before it was made;
- 17 then, in determining whether an amount of compensation that has
18 been paid to a person under this Act should not have been paid,
19 assume that the determination had been made when it came into
20 force.

21 **29ZD Qualifying occasion on which employee breaches an obligation** 22 **of mutuality**

- 23 For the purposes of this Act, a *qualifying occasion* on which an
24 employee breaches an obligation of mutuality in relation to an
25 injury means:
- 26 (a) if the breach is covered by section 29L—the occasion when
27 the breach occurred; or
- 28 (b) if the breach is not covered by section 29L—the occasion
29 when the breach first occurred; or
- 30 (c) an occasion that, in accordance with a determination under
31 section 29W or 29X, is treated as a *qualifying occasion* on
32 which the employee breaches an obligation of mutuality;
- 33 so long as the occasion occurred after the commencement of this
34 section.

1 **15 Subsections 57(2) and (5)**

2 Repeal the subsections.

3 **16 Subsection 60(1) (definition of *determination*)**

4 Before “30”, insert “29W, 29X, 29Z,”.

5 **Division 2—Application provisions**

6 **17 Application of amendments**

- 7 (1) The amendments of section 29G of the *Safety, Rehabilitation and*
8 *Compensation Act 1988* made by this Part apply in relation to a
9 requirement made under subsection 50(5) of that Act after the
10 commencement of this item.
- 11 (2) The amendments of section 29J of the *Safety, Rehabilitation and*
12 *Compensation Act 1988* made by this Part apply in relation to a
13 requirement made under subsection 118(3) of that Act after the
14 commencement of this item.
- 15 (3) Section 29H of the *Safety, Rehabilitation and Compensation Act 1988*
16 (as amended by this Part) applies in relation to an injury sustained by an
17 employee after the commencement of this item.
- 18 (4) Subsections 29L(1) and (3) of the *Safety, Rehabilitation and*
19 *Compensation Act 1988* (as amended by this Part) apply in relation to
20 an offer of suitable employment if the offer was received after the
21 commencement of this item.
- 22 (5) Subsection 29L(5) of the *Safety, Rehabilitation and Compensation Act*
23 *1988* (as amended by this Part) applies in relation to a failure to seek
24 suitable employment, to the extent to which the failure occurred after
25 the commencement of this item.
- 26 (6) Section 29M of the *Safety, Rehabilitation and Compensation Act 1988*
27 (as amended by this Part) applies in relation to a requirement made by a
28 relevant authority under subsection 57(1) of that Act after the
29 commencement of this item.
- 30 (7) Section 29N of the *Safety, Rehabilitation and Compensation Act 1988*
31 (as amended by this Part) applies in relation to an absence that began
32 after the commencement of this item.

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- 1 (8) Section 29P of the *Safety, Rehabilitation and Compensation Act 1988*
2 (as amended by this Part) applies in relation to advice given after the
3 commencement of this item.
- 4 (9) Section 29Q of the *Safety, Rehabilitation and Compensation Act 1988*
5 (as amended by this Part) applies in relation to a requirement made after
6 the commencement of this item.
- 7 (10) Section 29R of the *Safety, Rehabilitation and Compensation Act 1988*
8 (as amended by this Part) applies in relation to a refusal or failure to
9 fulfil responsibilities under a workplace rehabilitation plan, to the extent
10 to which the refusal or failure occurred after the commencement of this
11 item.
- 12 (11) Section 29S of the *Safety, Rehabilitation and Compensation Act 1988*
13 (as amended by this Part) applies in relation to a requirement made after
14 the commencement of this item.
- 15 (12) Subsections 29T(1) and (2) of the *Safety, Rehabilitation and*
16 *Compensation Act 1988* (as amended by this Part) apply in relation to a
17 requirement made after the commencement of this item.
- 18 (13) Section 29U of the *Safety, Rehabilitation and Compensation Act 1988*
19 (as amended by this Part) applies in relation to a requirement made after
20 the commencement of this item.
- 21 (14) Section 29V of the *Safety, Rehabilitation and Compensation Act 1988*
22 (as amended by this Part) applies in relation to a requirement made after
23 the commencement of this item.

24 **18 Transitional—subsections 57(2) and (5) of the *Safety,***
25 ***Rehabilitation and Compensation Act 1988***

26 Despite the repeal of subsections 57(2) and (5) of the *Safety,*
27 *Rehabilitation and Compensation Act 1988* by this Part, those
28 subsections continue to apply, in relation to a requirement made by a
29 relevant authority under subsection 57(1) of that Act before the
30 commencement of this item, as if that repeal had not happened.

Schedule 16—Defence-related claims

Safety, Rehabilitation and Compensation Act 1988

1 At the end of section 147

Add:

- (3) In addition, this Act applies to defence-related claims and matters arising out of those claims as if:
- (a) the amendments of this Act made by Schedules 1 to 15 and 17 to the *Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Act 2015* had not been enacted; and
 - (b) after the commencement of Part 1 of Schedule 2 to the *Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Act 2015*, each reference in this Act to an approved program provider were a reference to an approved workplace rehabilitation provider.
- (4) After the commencement of Part 1 of Schedule 2 to the *Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Act 2015*, each of the following amendments made by that Schedule is excluded from paragraph (3)(a):
- (a) the amendment that repealed the definition of **approved program provider** in subsection 4(1);
 - (b) the amendment that inserted the definition of **approved workplace rehabilitation provider** in subsection 4(1);
 - (c) the amendment of section 34;
 - (d) the amendments of Division 2 of Part III.
- (5) After the commencement of Part 1 of Schedule 12 to the *Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Act 2015*, each of the following amendments made by that Act is excluded from paragraph (3)(a):
- (a) the amendment made by item 20 of Schedule 12 to that Act, to the extent that that item inserted sections 28A and 28B;

- 1 (b) the amendment made by item 1 of Schedule 17 to that Act, to
2 the extent that that item inserted the definition of *associated*
3 *injury* in subsection 4(1);
- 4 (c) the amendment made by item 2 of Schedule 17 to that Act
5 (associated injury).
- 6 (6) For the purposes of paragraph (5)(a), assume that:
- 7 (a) the amendment mentioned in that paragraph applied in
8 relation to an injury sustained by an employee after the
9 commencement of Part 1 of Schedule 12 to the *Safety,*
10 *Rehabilitation and Compensation Amendment (Improving the*
11 *Comcare Scheme) Act 2015*, unless the injury is the result of
12 an injury sustained by the employee before the
13 commencement of Part 1 of that Schedule; and
14 (b) Part 2 of that Schedule had not been enacted.
- 15 (7) If a defence-related claim relates to an injury that results in a
16 permanent impairment, Division 4 of Part II has effect, after the
17 commencement of Part 1 of Schedule 12 to the *Safety,*
18 *Rehabilitation and Compensation Amendment (Improving the*
19 *Comcare Scheme) Act 2015*, subject to the following
20 modifications:
- 21 (a) first, work out the amount of compensation that would be
22 payable under that Division in respect of the injury if this
23 subsection had not been enacted;
- 24 (b) second, work out the amount of compensation that would be
25 payable under that Division in respect of the injury if it were
26 assumed that:
- 27 (i) the amendments of this Act made by that Schedule had
28 applied in relation to the injury; and
- 29 (ii) item 15 of that Schedule had not been enacted; and
- 30 (iii) item 20 of that Schedule, to the extent that that item
31 inserted section 28C, had not been enacted; and
- 32 (iv) Part 2 of that Schedule had not been enacted; and
- 33 (v) the amendments of this Act made by that Schedule
34 applied in relation to an injury sustained by an
35 employee after the commencement of Part 1 of that
36 Schedule, unless the injury is the result of an injury

1 **Schedule 17—Interpretation**

2 **Part 1—Amendments commencing on the day after**
3 **Royal Assent**

4 ***Safety, Rehabilitation and Compensation Act 1988***

5 **1 Subsection 4(1)**

6 Insert:

7 *associated injury* has the meaning given by section 6B.

8 *Health Practitioner Regulation National Law* means a State or
9 Territory law that provides for the registration or licensing of
10 individuals who practise in any or all of the following professions
11 or occupations:

- 12 (a) Aboriginal and Torres Strait Islander health practice;
13 (b) Chinese medicine;
14 (c) chiropractic;
15 (d) dental (including the profession of a dentist, dental therapist,
16 dental hygienist, dental prosthetist and oral health therapist);
17 (e) medical;
18 (f) medical radiation practice;
19 (g) nursing and midwifery;
20 (h) occupational therapy;
21 (i) optometry;
22 (j) osteopathy;
23 (k) pharmacy;
24 (l) physiotherapy;
25 (m) podiatry;
26 (n) psychology;
27 (o) a profession or occupation specified in the regulations.

28 *legally qualified dentist* means a person registered under a Health
29 Practitioner Regulation National Law in the dental profession as a
30 dentist (other than as a student).

1 ***legally qualified medical practitioner*** means a person registered
2 under a Health Practitioner Regulation National Law in the
3 medical profession (other than as a student).

4 ***working day*** means a day that is not:

- 5 (a) a Saturday; or
- 6 (b) a Sunday; or
- 7 (c) a public holiday in any State or Territory.

8 **2 After section 6A**

9 Insert:

10 **6B Associated injury**

11 *Injuries other than diseases*

12 (1) For the purposes of this Act, if the following conditions are
13 satisfied in relation to 2 or more injuries to an employee:

- 14 (a) those injuries are not diseases;
- 15 (b) those injuries arise out of, or in the course of:
 - 16 (i) the same incident; or
 - 17 (ii) the same state of affairs;

18 each of those injuries is an ***associated injury*** in relation to each
19 other of those injuries.

20 (2) For the purposes of subsection (1), if:

- 21 (a) one or more injuries (the ***primary injuries***) to an employee
22 arise out of, or in the course of, a particular:
 - 23 (i) incident; or
 - 24 (ii) state of affairs; and

25 (b) any of the primary injuries results in one or more other
26 injuries (the ***secondary injuries***) to the employee;
27 each of the secondary injuries is taken to have arisen out of, or in
28 the course of, that incident, or that state of affairs, as the case may
29 be.

1

Injuries that are diseases

2

(3) For the purposes of this Act, if the following conditions are satisfied in relation to 2 or more injuries to an employee:

3

4

(a) those injuries are diseases;

5

(b) those injuries were contributed to, to a significant degree, by:

6

(i) the same incident; or

7

(ii) the same state of affairs;

8

each of those injuries is an *associated injury* in relation to each other of those injuries.

9

10

(4) For the purposes of subsection (3), if:

11

(a) one or more injuries (the *primary injuries*) to an employee were contributed to, to a significant degree, by a particular:

12

13

(i) incident; or

14

(ii) state of affairs; and

15

(b) any of the primary injuries results in one or more other injuries (the *secondary injuries*) to the employee;

16

17

each of the secondary injuries is taken to have been contributed to, to a significant degree, by that incident, or that state of affairs, as the case may be.

18

19

20

Injuries covered by subsection 4(3)

21

(5) This section does not apply to an injury covered by subsection 4(3).

22

1 **Part 2—Amendments contingent on commencement**
2 **of Schedule 2 to the Safety, Rehabilitation**
3 **and Compensation Legislation Amendment**
4 **Act 2015**

5 *Safety, Rehabilitation and Compensation Act 1988*

6 **3 Subsection 4(1) (definition of *working day*) (the definition**
7 **that was inserted by item 20 of Schedule 2 to the**
8 ***Safety, Rehabilitation and Compensation Legislation***
9 ***Amendment Act 2015*)**

10 Repeal the definition.