Military Rehabilitation and Compensation Act 2004

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Prepared by the Office of Parliamentary Counsel, Canberra

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About this compilation

This compilation

This is a compilation of the *Military Rehabilitation and Compensation Act 2004* that shows the text of the law as amended and in force on 1 July 2026 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

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The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

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If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide rehabilitation, compensation and other entitlements for veterans, members and former members of the Defence Force, and for other purposes

Chapter 1—Introduction

Part 1—Preliminary

1 Short title

This Act may be cited as the *Military Rehabilitation and Compensation Act 2004*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	27 April 2004
2. Sections 3 to 359	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act	1 July 2004 (*see Gazette* 2004, GN22)

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Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
	receives the Royal Assent, they commence on the first day after the end of that period.	
3. Sections 360 to 385	The day on which this Act receives the Royal Assent.	27 April 2004
4. Sections 386 to 440	At the same time as the provision(s) covered by table item 2.	1 July 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Simplified outline of this Act

This Act provides rehabilitation, compensation and other entitlements for veterans and other members of the Defence Force (referred to in this Act as members and formers members) and for members of their families.

In particular, this Act provides for:

(a) compensation and other benefits to be provided for current and former members of the Defence Force who suffer a service injury or disease; and

(aa) rehabilitation programs for current or former members of the Defence Force (including some who have made a claim for acceptance of liability by the Commission for a service injury or disease and some who have not made such a claim and who need not have a service injury or disease); and

(b) compensation and other benefits to be provided for the dependants of some deceased members; and

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(c) certain assistance (such as child care, counselling and household services) to members or former members or to related persons of members, former members or deceased members.

From the date of commencement, the benefits and assistance provided for by this Act cover all members and former members, regardless of when they rendered service or the nature of that service, and this is the only Act under which a claim for such benefits and assistance can be made.

Note 1: Part 2 of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004* deals with the application of this Act on and after the date of commencement.

Note 2: Part IA of the DRCA and Part IA of the VEA deal with the closure of those Acts to certain new claims on and after the date of commencement.

Before most benefits can be paid or provided, the Commission must accept liability for an injury, disease or death of a current or former member under Chapter 2. Chapters 3, 4, 5 and 6 set out what the benefits are. Assistance or benefits under Chapter 5A can be provided before the Commission has accepted such liability.

The procedure for dealing with claims under this Act is dealt with under Chapters 7 and 8. The Veterans' Review Board is dealt with in Chapter 8A. The Repatriation Commission, the Repatriation Medical Authority, the Specialist Medical Review Council and the administration of the Act are dealt with in Chapters 9 to 11.

Provisions in this Act might be affected by the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*.

A person who is entitled to a benefit under this Act might also be entitled to a pension, allowance or other benefit under the VEA. This might include the following:

(a) a service pension under Part III of that Act;
(b) treatment under Part V of that Act;

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(c) veterans supplement or Income Support Supplement;
(d) a funeral benefit.

Note: Under section 203 of the VEA, the Minister may enter into an arrangement with a foreign country providing for the making of payments that are, or the provision of treatment or rehabilitation that is, comparable to payments or treatment or rehabilitation under this Act.

4 Extension to external Territories

This Act extends to every external Territory.

4A Secretary may arrange for use of computer programs to make decisions or determinations

(1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which the Commission may, or must, under this Act or a legislative instrument made for the purposes of this Act:
(a) make a decision or determination; or
(b) exercise any power or comply with any obligation; or
(c) do anything else related to making a decision or determination or exercising a power or complying with an obligation.

(1A) Subsection (1) does not apply to the following:
(a) a decision or determination that the death of a person is not a service death;
(b) a decision or determination that an injury sustained by a person is not a service injury;
(c) a decision or determination that a disease contracted by a person is not a service disease.

(2) For the purposes of this Act or the legislative instrument, the Commission is taken to have:
(a) made a decision or determination; or
(b) exercised a power or complied with an obligation; or

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(c) done something else related to the making of a decision or determination or the exercise of a power or the compliance with an obligation;

that was made, exercised, complied with or done by the operation of a computer program under an arrangement made under subsection (1).

Substituted decisions or determinations

(3) The Commission may, under a provision of this Act or of the legislative instrument, make a decision or determination in substitution for a decision or determination the Commission is taken to have made under paragraph (2)(a) if the Commission is satisfied that the decision or determination made by the operation of the computer program is incorrect.

Note: For review of a determination made in substitution, see Chapter 8.

(4) Subsection (3) does not limit Chapter 8 (about reconsideration and review of determinations).

5 Definitions

(1) In this Act:

actual earnings:

(a) in Part 3 of Chapter 4—has the meaning given by subsection 89(3); and

(b) in Part 4 of Chapter 4—has the meaning given by subsection 132(1).

aggravated injury or disease means an injury or disease that is a service injury or disease because of paragraph 27(d), subsection 29(2) or section 30 (aggravations etc.) (and only because of that paragraph, subsection or section).

allowance period has the meaning given by subsection 230A(2).

alternative dispute resolution processes means procedures and services for the resolution of disputes, and includes the following:

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(a) conferencing;
(b) mediation;
(c) neutral evaluation;
(d) case appraisal;
(e) conciliation;
(f) procedures or services prescribed in an instrument under subsection (1A);

but does not include the following:

(g) arbitration;
(h) court procedures or services.

Paragraphs (b) to (f) of this definition do not limit paragraph (a) of this definition.

appointed Commissioner means a Commissioner other than the President.

approved program provider has the meaning given by section 41.

approved rehabilitation program has the meaning given by section 41.

attendant care services has the meaning given by section 213.

Australian contingent, in relation to a Peacekeeping Force, means a contingent of that Force that has been authorised or approved by the Australian Government.

Australian Defence Force has the same meaning as in the *Defence Act 1903*.

Australian Defence Force Cadets has the meaning given by the *Defence Act 1903*.

Australian member, in relation to a Peacekeeping Force, means a member of that Force whose membership has been authorised or approved by the Australian Government.

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authorised travel, in relation to a member of a Peacekeeping Force, means travel authorised by the appropriate authority, being an authority approved by the Minister for the purpose.

Authority means the Repatriation Medical Authority continued in existence by section 370B.

Authority member means a member of the Authority, appointed under section 370DA, and includes the Chair of the Authority.

Board means the Veterans' Review Board continued in existence by section 359B.

Board member means the Principal Member, a Senior Member or another member of the Board.

British nuclear test defence service has the meaning given by section 6B.

cadet means a member of the Australian Defence Force cadets.

child: without limiting who is a child of a person for the purposes of this Act, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

civilian work means work other than as a member of the Defence Force.

claimant means a person who has made a claim under section 319.

clean energy bonus under an Act or scheme means any of the following that is provided for by the Act or scheme:

(b) a payment known as an energy supplement or a quarterly energy supplement;

(c) an increase that is described using the phrase "energy supplement" and affects the rate of another payment that is provided for by the Act or scheme.

clean energy payment means energy supplement.

clean energy underlying payment means:

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(a) compensation under Part 2 of Chapter 4 (whether weekly compensation or a lump sum); or
(b) Special Rate Disability Pension; or
(ba) Additional Disablement Amount under Division 3A of Part 7 of Chapter 4; or
(c) compensation under Division 2 of Part 2 of Chapter 5 (whether weekly compensation or a lump sum).

Comcare means the body corporate established by section 68 of the *Safety, Rehabilitation and Compensation Act 1988*.

Commission means the Repatriation Commission continued in existence by section 360B.

Commissioner means an appointed Commissioner or the President.

Commonwealth superannuation scheme means:
(aa) for the purposes of the following provisions:
(i) sections 89A and 89B;
(ii) Division 7 of Part 3 of Chapter 4;
(iii) sections 416 to 418 (to the extent to which they relate to compensation under Part 3 of Chapter 4);
any superannuation scheme under which or to which, or retirement savings account to which, the Commonwealth or a Commonwealth authority makes contributions on behalf of employees (other than members of the Defence Force) and includes a superannuation scheme established or maintained by the Commonwealth or a Commonwealth authority and the *Australian Defence Force Cover Act 2015*; or
(a) if a person's normal earnings are worked out (or would be worked out if the person had not chosen a Special Rate Disability Pension) under:
(i) Subdivision D of Division 4 of Part 4 of Chapter 4; or
(ii) Division 5 of Part 4 of Chapter 4; or
(iia) sections 126 and 126A;
(iii) Subdivision D of Division 8 of Part 4 of Chapter 4;

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any superannuation scheme under which or to which, or retirement savings account to which, the Commonwealth or a Commonwealth authority makes contributions on behalf of employees (other than members of the Defence Force) and includes a superannuation scheme established or maintained by the Commonwealth or a Commonwealth authority and the *Australian Defence Force Cover Act 2015*; or

(b) otherwise—any superannuation scheme under which the Commonwealth makes contributions on behalf of members of the Defence Force or the *Australian Defence Force Cover Act 2015*.

Note: Section 14 affects the operation of paragraph (a) of this definition.

compensable treatment has the meaning given by section 289.

compensation means compensation under this Act, including the following:

(a) alterations provided, or aids and appliances provided or repaired, under section 56;

(b) a Special Rate Disability Pension under Part 6 of Chapter 4;

(ba) Additional Disablement Amount under Division 3A of Part 7 of Chapter 4;

(c) MRCA supplement under section 221, 245 or 300;

(d) education or training provided under the education scheme mentioned in Division 6 of Part 3 of Chapter 5;

(da) prisoner of war recognition supplement under Part 3 of Chapter 5AA;

(e) treatment provided under Chapter 6;

(f) clean energy payments.

Conference Registrar means a Conference Registrar of the Board.

continuous full-time Reservist means a member of the Reserves on continuous full-time service.

continuous full-time service (CFTS) means defence service of a continuous nature that is rendered by a member of the Reserves.

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Section 5

Councillor means a Councillor of the Review Council appointed under section 380DA, and includes the Convener of the Review Council.

date of commencement means 1 July 2026.

date of the member's death for a deceased member means the date determined under section 343 for the member.

deceased member means a person:

(a) who has died; and

(b) who was a member or former member before his or her death.

declared member means a person to whom a determination under section 8 applies.

de facto relationship: see section 19A.

Defence Department means the Department of State that deals with defence and that is administered by the Defence Minister.

Defence Force means:

(a) the Permanent Forces; and

(b) the Reserves.

Defence Minister means the Minister administering section 1 of the *Defence Act 1903*.

defence service has the meaning given by subsection 6(1A).

dental practitioner means a person registered or licensed as a dental practitioner or dentist under a law of a State or Territory that provides for the registration or licensing of dental practitioners or dentists.

dependant has the meaning given by section 15.

dependent means dependent for economic support.

Deputy Registrar means a Deputy Registrar of the Board.

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domicile has a meaning affected by section 19B.

DRCA means the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

disease means:

(a) any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development); or

(b) the recurrence of such an ailment, disorder, defect or morbid condition;

but does not include:

(c) the aggravation of such an ailment, disorder, defect or morbid condition; or

(d) a temporary departure from:

(i) the normal physiological state; or

(ii) the accepted ranges of physiological or biochemical measures;

that results from normal physiological stress (for example, the effect of exercise on blood pressure) or the temporary effect of extraneous agents (for example, alcohol on blood cholesterol levels).

duty, for a cadet or a declared member, has the meaning given by section 9.

Note: ***Duty*** has its ordinary meaning for other kinds of members.

eligible young person means:

(a) a person under 16; or

(b) a person who:

(i) is 16 or more but under 25; and

(ii) is receiving full-time education at a school, college, university or other educational institution; and

(iii) is not in full-time employment or engaged in work full-time on his or her own account.

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energy supplement means energy supplement payable under section 83A, 209A, 220D or 238A.

expense allowance means an allowance paid in respect of any expense incurred, or likely to be incurred, by a person in respect of the person's work.

former member means a person who has ceased to be a member.

Note: A cadet or a part-time Reservist who is unlikely to be able to perform his or her duties in the future as a result of an incapacity might be taken to be a former member (see section 10).

full-time service means defence service as:

(a) a Permanent Forces member; or

(b) a continuous full-time Reservist.

guidance and appeals panel has the same meaning as in the *Administrative Review Tribunal Act 2024*.

guidance and appeals panel application has the same meaning as in the *Administrative Review Tribunal Act 2024*.

hazardous service has the meaning given by section 6C.

hospital or other institution includes the following:

(a) a home;

(b) a hostel;

(c) a medical centre;

(d) an out-patient clinic;

(e) a rehabilitation or training establishment.

household services has the meaning given by section 213.

impairment, in relation to a person, means the loss, the loss of the use, or the damage or malfunction, of any part of the person's body, of any bodily system or function, or of any part of such a system or function.

impairment points of a person means the points worked out for the person using the guide determined under section 67.

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incapacitated person:

(a) in Division 5 of Part 4 of Chapter 4—has the meaning given by section 152; and

(b) in Division 6 of Part 4 of Chapter 4—has the meaning given by section 160; and

(c) in Division 7 of Part 4 of Chapter 4—has the meaning given by section 163; and

(d) in Division 8 of Part 4 of Chapter 4—has the meaning given by section 166.

incapacitated Reservist:

(a) in Division 3 of Part 3 of Chapter 4—has the meaning given by section 94; and

(b) in Division 4 of Part 3 of Chapter 4—has the meaning given by section 103; and

(c) in Division 5 of Part 3 of Chapter 4—has the meaning given by section 107.

incapacity for service, in relation to a person who has sustained an injury or contracted a disease, means an incapacity of the person to engage in the defence service that he or she was engaged in before the onset of the incapacity, at the same level at which he or she was previously engaged.

Note: For example, a person might be unable to engage in defence service at the same level at which he or she was engaged before the incapacity because the person is unable to perform all of his or her previous duties or is unable to work his or her normal weekly hours.

incapacity for service or work means incapacity for service or incapacity for work.

incapacity for work, in relation to a person who has sustained an injury or contracted a disease, means:

(a) an incapacity of the person to engage in the work that he or she was engaged in before the onset of the incapacity, at the same level at which he or she was previously engaged; or

(b) if the person was not previously engaged in work, an incapacity of the person to engage in any work that it is

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reasonably likely that he or she would otherwise be engaged in.

Note: For example, a person might be unable to engage in work at the same level at which he or she was engaged before the incapacity because the person is unable to perform all of his or her previous duties or is unable to work his or her normal weekly hours.

indexation year means the financial year commencing on 1 July 2003, and each subsequent financial year.

initial training for a person means:

(a) for an officer (other than a non-commissioned officer)—training undertaken to become a commissioned officer; and

(b) otherwise—recruit training and initial employment training undertaken to allocate the person to a category of defence work.

injury means any physical or mental injury (including the recurrence of a physical or mental injury) but does not include:

(a) a disease; or

(b) the aggravation of a physical or mental injury.

legal personal representative means:

(a) the executor of the will, or the administrator of the estate, of a deceased person; or

(b) the trustee of the estate of a person under a legal disability; or

(c) a person who holds an enduring power of attorney granted by another person; or

(d) a person who, by order of a court or otherwise, has the legal administration or control of the affairs of another person.

medical aid of a person means an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, that is used by the person.

medical practitioner means a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.

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member means:

(a) a member of the Defence Force; or

(b) a cadet; or

(ba) a person to whom section 7A applies; or

(c) a declared member; or

(d) a member of a Peacekeeping Force.

member of a Peacekeeping Force means a person who is serving, or has served, with a Peacekeeping Force outside Australia as an Australian member, or as a member of the Australian contingent, of that Peacekeeping Force.

National Registrar means the National Registrar of the Board.

non-warlike service has the meaning given by paragraph 6(1)(b).

normal earnings:

(a) in Part 3 of Chapter 4—has the meaning given by subsection 89(3);

(b) in Part 4 of Chapter 4—has the meaning given by subsection 132(2).

normal weekly hours has the meaning given by subsection 132(2).

onset date, for a person's incapacity for service or work, means the date determined under section 342 for the person.

operational service has the meaning given by sections 444 to 450.

overtime includes:

(a) time spent performing duties on shifts or on Saturdays, Sundays or other holidays; and

(b) excess travelling time;

that does not count towards the average number of hours worked.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

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parent: without limiting who is a parent of a person for the purposes of this Act, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this subsection.

partner of a member means a person in respect of whom at least one of the following applies:

(a) if the member is a member of the Aboriginal race of Australia or a descendant of Indigenous inhabitants of the Torres Strait Islands—the person is recognised as the member's husband, wife or spouse by the custom prevailing in the tribe or group to which the member belongs;

(b) the person is legally married to the member;

(ba) a relationship between the person and the member (whether the person and the member are the same sex or different sexes) is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section;

(c) the person (whether of the same sex or a different sex to the member):

(i) is, in the Commission's opinion (see section 19A), in a de facto relationship with the member; and

(ii) is not an ancestor, descendant, brother, sister, half-brother or half-sister of the member (see subsection (3)).

Note: This section also applies to former members (see section 20).

part-time Reservist means a member of the Reserves who is not on continuous full-time service.

pay-related allowance means an allowance specified in a determination under section 11.

Peacekeeping Force has the meaning given by subsection 6A(3).

peacekeeping service has the meaning given by subsection 6A(1).

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peacetime service has the meaning given by paragraph 6(1)(c).

pension age has the meaning given by subsection 23(5A), (5B), (5C) or (5D) of the *Social Security Act 1991*.

Permanent Forces has the same meaning as in the *Defence Act 1903*.

Permanent Forces member means a member of the Permanent Forces.

pharmaceutical benefits means drugs, medicinal preparations and other pharmaceutical items (including aids to treatment and dressings) for the treatment of sicknesses or injuries suffered by human beings.

pharmaceutical benefits determination: see subsection 286(3).

practising lawyer means a person who is admitted to the legal profession by a federal court or a Supreme Court of a State or Territory and who holds a practising certificate (however described) entitling the person to practise that profession.

practitioner means a person:

(a) who is a medical practitioner; or

(b) who is a dental practitioner.

President means the President of the Commission.

presiding Councillor: see subsection 380DK(3).

Principal Member means the Principal Member of the Board.

registered charity means an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act.

Registrar means a Registrar of the Board.

rehabilitation authority has the meaning given by section 39.

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Section 5

rehabilitation program has the meaning given by section 41.

related person of a member has the meaning given by subsection 15(2).

related to service: see section 370C.

Reserves has the same meaning as in the *Defence Act 1903*.

retirement savings account means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997*.

Review Council means the Specialist Medical Review Council continued in existence by section 380B.

Secretary means Secretary of the Department.

Senior Member means a Senior Member of the Board.

service death has the meaning given by section 28 and subsection 29(3).

service disease has the meaning given by section 27, subsections 29(1) and (2) and section 30.

Note: A reference to a service disease being contracted includes a reference to a disease being aggravated by defence service (see section 7).

service injury has the meaning given by section 27, subsections 29(1) and (2) and section 30.

Note: A reference to a service injury being sustained includes a reference to an injury being aggravated by defence service (see section 7).

service injury, disease or death means a service injury, a service disease or a service death.

service injury or disease means a service injury or a service disease.

Services member means a Board member who, when appointed or re-appointed as a Board member, was a person selected from lists submitted in accordance with a request made under subsection 359C(3).

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sound medical-scientific evidence: see section 370CA.

Special Rate Disability Pension has the meaning given by section 198.

SRC Minister means the Minister administering Division 3 of Part VII of the *Safety, Rehabilitation and Compensation Act 1988*.

Statement of Principles means a Statement of Principles determined under:

(a) section 370CB (Statement of Principles—reasonable hypothesis); or
(b) section 370CC (Statement of Principles—balance of probabilities); or
(c) subsection 370CN(1) (Statement of Principles where directed by the Review Council—reasonable hypothesis); or
(d) subsection 370CN(3) (Statement of Principles where directed by the Review Council—balance of probabilities).

stepchild: without limiting who is a stepchild of a person for the purposes of this Act, someone who is a child of a partner of the person is the ***stepchild*** of the person, if he or she would be the person's stepchild except that the person is not legally married to the partner.

step-parent: without limiting who is a step-parent of a person for the purposes of this Act, someone who is a partner of a parent of the person is the ***step-parent*** of the person, if he or she would be the person's step-parent except that he or she is not legally married to the person's parent.

suitable work for a person means work for which the person is suited having regard to the following:

(a) the person's age, experience, training, language and other skills;
(b) the person's suitability for rehabilitation or vocational retraining;
(c) if work is available in a place that would require the person to change his or her place of residence—whether it is

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reasonable to expect the person to change his or her place of residence;

(d) any other relevant matter.

treatment has the meaning given by section 13.

treatment determination: see subsection 286(4).

Tribunal means the Administrative Review Tribunal.

trust funds, in respect of a trustee of payments of compensation or other benefits, means the following:

(a) the amounts of compensation or other benefits received by the trustee;

(b) interest on those amounts;

(c) investments of the compensation, benefits or interest;

(d) returns received on those investments.

VEA means the *Veterans' Entitlements Act 1986*.

VEA eligible child has the meaning given by subsection 257A(1).

VEA eligible grandchild has the meaning given by subsection 257A(1).

vocational assessment and rehabilitation has the meaning given by section 41.

warlike service has the meaning given by paragraph 6(1)(a).

wholly dependent partner of a deceased member means a person:

(a) who was the partner of the member immediately before his or her death; and

(b) who was wholly dependent on the member at that time.

Note: A partner who was living with a deceased member immediately before the member's death is taken to have been wholly dependent on the partner (see section 17).

work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

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(1A) The Minister may, by legislative instrument, prescribe procedures or services for the purposes of paragraph (f) of the definition of ***alternative dispute resolution processes*** in subsection (1).

(3) For the purposes of subparagraph (c)(ii) of the definition of ***partner*** in subsection (1), a child who is, or has ever been, an adopted child of a person is taken to be the natural child of that person and the person is taken to be the natural parent of the child.

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Part 2—Kinds of service to which this Act applies

6 Defence service

(1A) For the purposes of this Act, the following kinds of service are ***defence service***:

(a) warlike service;

(b) non-warlike service;

(c) British nuclear test defence service;

(d) hazardous service;

(e) peacetime service.

Note: This Act applies in relation to operational service as if it were warlike service or non-warlike service (see section 443).

(1) In this Act:

(a) ***warlike service*** means service with the Defence Force that is of a kind determined in writing by the Defence Minister to be warlike service for the purposes of this Act; and

(b) ***non-warlike service*** means service with the Defence Force that is of a kind determined in writing by the Defence Minister to be non-warlike service for the purposes of this Act, or service that is peacekeeping service; and

(c) ***peacetime service*** means service with the Defence Force that is not any of the following:

(i) warlike service;

(ii) non-warlike service;

(iii) British nuclear test defence service;

(iv) hazardous service.

Note: The determination may be varied or revoked (see subsection 33(3) of the *Acts Interpretation Act 1901*).

(2) For the purposes of subsection (1), ***service with the Defence Force*** means:

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(a) for a cadet—participation in the activities of the Australian Defence Force cadets; and

(b) for a declared member—engagement in, or performance of, activities or acts specified in the determination under section 8 that applies to the member.

6A Meanings of *peacekeeping service* and *Peacekeeping Force*

(1) ***Peacekeeping service*** means service rendered by a person with a Peacekeeping Force outside Australia, and includes:

(a) any period after the person's appointment or allocation to the Peacekeeping Force during which the person was travelling outside Australia for the purpose of joining the Peacekeeping Force; and

(b) any period (not exceeding 28 days) of authorised travel by the person outside Australia after the person has ceased to serve with the Peacekeeping Force.

(2) For the purposes of subsection (1):

(a) a person who has travelled from a place in Australia to a place outside Australia is taken to have commenced to travel outside Australia when the person departed from the last port of call in Australia; and

(b) a person who has travelled to Australia from a place outside Australia is taken to have been travelling outside Australia until the person arrived at the first port of call in Australia.

(3) A Peacekeeping Force described in column 1 of an item of the following table is a ***Peacekeeping Force*** for the purposes of this Act on and from the initial date specified in column 2 of the item.

Peacekeeping Forces

Item	Column 1 Description of Peacekeeping Force	Column 2 Initial date as a Peacekeeping Force
1	Security Council Commission of Investigation on the	29 January 1947

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Section 6A

Peacekeeping Forces		
Item	**Column 1** **Description of Peacekeeping Force**	**Column 2** **Initial date as a Peacekeeping Force**
	Balkans	
2	Committee of Good Offices	25 August 1947
3	United Nations Special Commission on the Balkans	26 November 1947
4	United Nations Commission on Korea	1 January 1949
5	United Nations Military Observer Group in India and Pakistan	1 January 1949
6	United Nations Commission for Indonesia	28 January 1949
7	United Nations Truce Supervision Organisation	1 June 1956
8	United Nations Operations in the Congo	1 August 1960
9	United Nations Yemen Observation Mission	1 January 1963
10	United Nations Force in Cyprus	14 May 1964
11	United Nations India-Pakistan Observation Mission	20 September 1965
12	United Nations Disengagement Observer Force	1 January 1974
13	United Nations Emergency Force Two	1 July 1976
14	United Nations Interim Force in Lebanon	23 March 1978
15	Commonwealth Monitoring Force in Zimbabwe	24 December 1979
16	Sinai Multinational Force and Observers established by the Protocol between the Arab Republic of Egypt and the State of Israel dated 3 August 1981	18 February 1982
17	United Nations Iran/Iraq Military Observer Group	11 August 1988
18	United Nations Border Relief Operation in Cambodia	1 February 1989
19	United Nations Transition Assistance Group Namibia	18 February 1989
20	United Nations Mission for the Referendum in Western Sahara (Mission des Nations Unies pour un Referendum au Sahara Occidental)	27 June 1991
21	The Australian Police Contingent of the United Nations Transitional Authority in Cambodia	18 May 1992
22	The Australian Police Contingent of the United	27 March 1994

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Peacekeeping Forces		
Item	**Column 1** **Description of Peacekeeping Force**	**Column 2** **Initial date as a Peacekeeping Force**
	Nations Operation in Mozambique	
23	Australian Defence Support to a Pacific Peacekeeping Force for a Bougainville Peace Conference	21 September 1994
24	The Australian Police Contingent of the Multi-National Force in Haiti	10 October 1994
25	The Australian Police Contingent of the United Nations Mission in East Timor	21 June 1999
26	The Australian Police Contingent of the United Nations Transitional Administration in East Timor	25 October 1999
27	The Australian Police Contingent of the United Nations Mission of Support in East Timor	20 May 2002
28	The Australian Police Contingent of the Regional Assistance Mission to Solomon Islands	24 July 2003
29	The Australian Police Contingent of the United Nations Mission in Sudan	1 January 2006

6B British nuclear test defence service

(1) A person has rendered ***British nuclear test defence service*** if, while the person was a member of the Defence Force, the person rendered service in an area mentioned in an item of the following table during the period mentioned in the item.

British nuclear test defence service in an area within a period		
Item	**Area**	**Period**
1	The area within 10 kilometres of Main Beach on Trimouille Island in the Monte Bello Archipelago	The period: (a) starting at the start of 3 October 1952; and (b) ending at the end of 19 June 1958

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Section 6B

British nuclear test defence service in an area within a period		
Item	**Area**	**Period**
2	The area within 25 kilometres of the Totem test sites at Emu Field	The period: (a) starting at the start of 15 October 1953; and (b) ending at the end of 25 October 1955
3	The area within 40 kilometres of any of the Buffalo or Antler test sites near Maralinga	The period: (a) starting at the start of 27 September 1956; and (b) ending at the end of 30 April 1965

(2) A person has rendered ***British nuclear test defence service*** if, while the person was a member of the Defence Force:

(a) the person was involved in the transport, recovery, maintenance or cleaning of a vessel, vehicle, aircraft or equipment at any time during a period mentioned in an item of the following table; and

(b) the vessel, vehicle, aircraft or equipment was contaminated as a result of its use in the area mentioned in the item.

British nuclear test defence service relating to work on contaminated things		
Item	**Period in which involvement occurred**	**Area where thing was contaminated**
1	The period: (a) starting at the start of 3 October 1952; and (b) ending at the end of 19 July 1956	The area within 10 kilometres of Main Beach on Trimouille Island in the Monte Bello Archipelago
2	The period: (a) starting at the start of 15 October 1953; and (b) ending at the end of 25 November 1953	The area within 25 kilometres of the Totem test sites at Emu Field
3	The period: (a) starting at the start of 27 September 1956; and	The area within 40 kilometres of any of the Buffalo or Antler test sites near Maralinga

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British nuclear test defence service relating to work on contaminated things		
Item	**Period in which involvement occurred**	**Area where thing was contaminated**
	(b) ending at the end of 30 May 1963	

(3) A person has rendered ***British nuclear test defence service*** if, while the person was a member of the Defence Force and at a time between the start of 3 October 1952 and the end of 31 October 1957, the person flew in an aircraft of the Royal Australian Air Force or the Royal Air Force that was at that time:

(a) used in measuring fallout from nuclear tests conducted in an area described in the table in subsection (1); and

(b) contaminated by the fallout.

(4) A person has rendered ***British nuclear test defence service*** if:

(a) the service was rendered while the person was a member of the Defence Force; and

(b) the person satisfies the requirements specified in an instrument under subsection (5).

(5) The Commission may, by legislative instrument, specify requirements for the purposes of subsection (4).

6C Hazardous service

Hazardous service is service with the Defence Force, before 1 July 2004, that is of a kind determined by the Defence Minister, by legislative instrument, to be hazardous service for the purposes of this section.

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Part 3—Other interpretation provisions

7 Reference to service injury sustained or service disease contracted includes reference to aggravation etc.

To avoid doubt, a reference to a service injury being sustained, or a service disease being contracted, at a particular time includes a reference to an injury or disease that is aggravated, or materially contributed to, by defence service at such a time.

7A Classes of members

For the purposes of paragraph (ba) of the definition of ***member*** in subsection 5(1), this section applies to the following:

(a) a person who holds an honorary rank or appointment in the Defence Force and who performs acts at the request or direction of the Defence Force;

(b) a person who performs acts at the request or direction of the Defence Force as an accredited representative of a registered charity (where the accreditation is by the Defence Force);

(c) a person who is receiving assistance under the Career Transition Assistance Scheme established under a determination under section 58B of the *Defence Act 1903* and who performs acts in connection with the scheme.

8 Ministerial determinations that other people are members

(1) The Defence Minister may make a written determination that a person, or a class of persons, who engage, or have engaged, in activities, or who perform, or have performed, acts:

(a) at the request or direction of the Defence Force; or

(b) for the benefit of the Defence Force; or

(c) in relation to the Defence Force, under a requirement made by or under a Commonwealth law;

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are taken to be, or to have been, members for the purposes of this Act.

Note: The determination may be varied or revoked (see subsection 33(3) of the *Acts Interpretation Act 1901*).

(2) The determination must specify:
  (a) the date (which may be retrospective) from which the determination applies; and
  (b) the person, or class of persons, to whom the determination applies; and
  (c) the activities or acts, or classes of activities or acts, to which the determination applies.

(3) The date referred to in paragraph (2)(a) must be, or be after, the date on which this section commences.

(4) A determination, or a variation or revocation of a determination, is a legislative instrument.

9 Definition of *duty* for cadets and declared members

In this Act:

duty:
  (a) for a cadet—means participation in an activity mentioned in paragraph 6(2)(a); and
  (b) for a declared member—means engagement in or performance of an activity or act specified in the determination that applies to the member, as mentioned in paragraph 6(2)(b).

Note: ***Duty*** has its ordinary meaning for other kinds of members.

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10 Determinations for part-time Reservists and cadets who are unlikely to return to defence service

Determination that part-time Reservist unlikely to return to defence service

(1) If a claim for compensation has been made under section 319 in respect of a part-time Reservist, the Chief of the Defence Force may advise the Commission in writing if the Reservist is unlikely to be able to perform the duties of a part-time Reservist in the future as a result of his or her incapacity.

Determination that cadet unlikely to return to defence service

(2) If a claim for compensation has been made under section 319 in respect of a cadet, the commanding officer of the cadet's unit may advise the Commission in writing if the cadet is unlikely to be able to perform the duties of a cadet in the future as a result of his or her incapacity.

Person taken to have ceased to be a member

(3) If the Commission is given an advice in respect of a person under subsection (1) or (2), the person is taken to have ceased to be a member for the purposes of this Act.

Advice to specify the date

(4) The advice must specify the date (which must not be retrospective) from which the person is taken to have ceased to be a member for the purposes of this Act.

11 Ministerial determination of pay-related allowances

(1) The Defence Minister must make a written determination specifying which allowances that are paid under a determination made under section 58B or 58H of the *Defence Act 1903* are pay-related allowances for the purposes of this Act.

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Note: The determination may be varied or revoked (see subsection 33(3) of the *Acts Interpretation Act 1901*).

(2) A determination, or a variation or revocation of a determination, is a legislative instrument.

12 Deceased members whose dependants are entitled to benefits under this Act

Deceased member whose death was a service death

(1) This section applies in respect of a deceased member if the Commission has accepted liability for the member's death.

Note: A dependant of a deceased member in respect of whom this section applies might be entitled to compensation under Chapter 5 or 6.

Deceased members eligible for Special Rate Disability Pension

(2) This section applies in respect of a deceased member if the member satisfied the eligibility criteria in section 199 (persons who are eligible for Special Rate Disability Pension) during some period of his or her life.

Deceased members eligible for Additional Disablement Amount

(2A) This section applies in respect of a deceased member if the member satisfied the eligibility criteria in section 220A (Additional Disablement Amount) during some period of the member's life.

Deceased members with 80 impairment points

(3) This section applies in respect of a deceased member if the Commission has determined under Part 2 of Chapter 4 that the impairment suffered by the deceased member before the member's death, as a result of one or more service injuries or diseases, constituted 80 or more impairment points.

13 Definition of *treatment*

(1) In this Act:

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treatment means treatment provided, or action taken, with a view to:

(a) restoring a person to physical or mental health or maintaining a person in physical or mental health; or

(b) alleviating a person's suffering; or

(c) ensuring a person's social well-being.

(2) For the purposes of subsection (1), ***treatment*** includes:

(a) providing accommodation in a hospital or other institution, or providing medical procedures, nursing care, social or domestic assistance or transport; and

(b) supplying, renewing, maintaining and repairing artificial replacements, medical aids and other aids and appliances; and

(c) providing diagnostic and counselling services;

for the purposes of, or in connection with, any treatment.

14 Definition of *Commonwealth superannuation scheme* for a person who has chosen a Special Rate Disability Pension

For the purposes of paragraph (a) of the definition of ***Commonwealth superannuation scheme*** in section 5, the normal earnings of a person who has chosen a Special Rate Disability Pension would be worked out under Subdivision D of Division 4 or 8 of Part 4 of Chapter 4 if the amount worked out under that Subdivision is greater than the amount worked out under Subdivision C of Division 4 or 8 of Part 4 of Chapter 4.

15 Definitions of *dependant* and *related person*

(1) A ***dependant*** of a member means a related person of the member:

(a) who is wholly or partly dependent on the member; or

(b) who would be wholly or partly dependent on the member but for an incapacity of the member that resulted from an injury or disease or an aggravation of an injury or disease.

Note 1: Sections 17 and 18 set out some examples of when a person is wholly dependent on a member.

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Note 2: This section also applies to former members (see section 20).

(2) A ***related person*** of a member is:

(a) any of the following persons:

(i) the member's partner;

(ii) a parent or step-parent of the member;

(iii) a parent or step-parent of the member's partner;

(iv) a grandparent of the member;

(v) a child or stepchild of the member;

(vi) a child or stepchild of the member's partner;

(vii) a grandchild of the member;

(viii) the member's brother, sister, half-brother or half-sister; or

Note: This paragraph is affected by section 16.

(b) a person in respect of whom the member stands in the position of a parent; or

(c) a person who stands in the position of a parent to the member.

16 Certain relationships

(1) For the purposes of paragraph 15(2)(a), if one person is the child of another person because of:

(a) adoption; or

(b) the definition of ***child*** in this Act;

relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

(2) For the purposes of paragraphs 215(f) and 218(g), the relatives of a person are taken to include the following (without limitation):

(a) a partner of the person;

(b) a stepchild or an adopted child of the person, or someone of whom the person is a stepchild or an adopted child;

(c) someone who is a child of the person, or someone of whom the person is a child, because of the definition of ***child*** in this Act;

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(d) anyone else who would be a relative of the person if someone mentioned in paragraph (a), (b) or (c) is taken to be a relative of the person.

17 When partners and eligible young persons are wholly dependent on a member

Partners

(1) For the purposes of this Act, the partner of a member is taken to be wholly dependent on the member if:

(a) the partner lives with the member; or

(b) the Commission is of the opinion that the partner would be living with the member but for a temporary absence of the member or partner or but for an absence of the member or partner due to illness or infirmity.

Note: This subsection also applies to former members (see section 20).

Eligible young persons

(2) For the purposes of this Act, an eligible young person is taken to be wholly dependent on a member if:

(a) either:

(i) the young person lives with the member; or

(ii) the Commission is of the opinion that the young person would be living with the member but for a temporary absence of the member or young person or but for an absence of the member or young person due to illness or infirmity; or

(b) the member is liable to provide child support under the *Child Support (Assessment) Act 1989* for the young person.

Note: This subsection also applies to former members (see section 20).

18 Child of a member born or adopted after the member's death

(1) For the purposes of this Act, a child of a deceased member who is born alive after the member's death:

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(a) is taken to have been wholly dependent on the member immediately before the member's death; and

(b) is taken to have been an eligible young person immediately before the member's death.

Note: A deceased member may be a member or former member at the time of his or her death (see the definition of ***deceased member*** in section 5).

(2) For the purposes of this Act, if, before a deceased member's death, a member begins adoption proceedings to adopt a child, and the proceedings are finalised after the member's death, the child:

(a) is taken to have been wholly dependent on the member immediately before the member's death; and

(b) is taken to have been an eligible young person immediately before the member's death.

Note: A deceased member may be a member or former member at the time of his or her death (see the definition of ***deceased member*** in section 5).

19 Ascertaining whether persons receiving family tax benefits etc. are dependent

For the purposes of ascertaining whether a person is or was dependent on a member, any amount of the following benefits must not be taken into account:

(a) family tax benefit worked out under Part 2 or 3 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* (an individual's Part A rate);

(b) carer's allowance under the *Social Security Act 1991*;

(c) double orphan pension under the *Social Security Act 1991*.

Note: This section also applies to former members (see section 20).

19A De facto relationships

In forming an opinion for the purposes of this Act whether 2 people are living together in a de facto relationship, regard is to be

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had to all the circumstances of the relationship including, in particular, the following matters:

(a) the financial aspects of the relationship, including:
  (i) any joint ownership of real estate or other major assets and any joint liabilities; and
  (ii) any significant pooling of financial resources especially in relation to major financial commitments; and
  (iii) any legal obligations owed by one person in respect of the other person; and
  (iv) the basis of any sharing of day-to-day household expenses;

(b) the nature of the household, including:
  (i) any joint responsibility for providing care or support of children; and
  (ii) the living arrangements of the people; and
  (iii) the basis on which responsibility for housework is distributed;

(c) the social aspects of the relationship, including:
  (i) whether the people hold themselves out as being in a de facto relationship with each other; and
  (ii) the assessment of friends and regular associates of the people about the nature of their relationship; and
  (iii) the basis on which the people make plans for, or engage in, joint social activities;

(d) any sexual relationship between the people;

(e) the nature of the people's commitment to each other, including:
  (i) the length of the relationship; and
  (ii) the nature of any companionship and emotional support that the people provide to each other; and
  (iii) whether the people consider that the relationship is likely to continue indefinitely; and
  (iv) whether the people see their relationship as a de facto relationship.

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19B Domicile

(1) A person is taken for the purposes of this Act to have been capable of having an independent domicile at a time before 1 July 1982 if the person had turned 18 at or before that time.

Note: Subsection 8(1) of the *Domicile Act 1982* has a similar effect for a time occurring on or after 1 July 1982.

(2) Subsection (1) has effect despite any rule of law to the contrary.

20 Some references to members include references to former members

For the purposes of the definition of ***partner*** in section 5, and for the purposes of sections 15, 17 and 19, a reference to a member includes a reference to a former member.

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Chapter 2—Accepting liability for service injuries, diseases and deaths

Part 1—Simplified outline of this Chapter

21 Simplified outline of this Chapter

A condition for most benefits under this Act is that the Commission has accepted liability for an injury, disease or death. The Commission accepts liability if there is some connection between the injury, disease or death and defence service.

The process for deciding whether to accept liability is as follows:

(a) first, a person makes a claim under section 319 for acceptance of liability for an injury, disease or death (the rules for making claims are found in Chapter 7);

(b) then, the Commission decides whether the injury, disease or death is a service injury, disease or death under Part 3;

(c) then, the Commission decides whether it is prevented from accepting liability for the injury, disease or death because of an exclusion under Part 4 (for example, because the injury, disease or death resulted from a serious default or a wilful act).

The Commission must accept liability if the injury, disease or death is a service injury, disease or death, and none of the exclusions in Part 4 apply. The Commission is taken to have accepted liability for an injury or disease in certain circumstances.

The effect of this Chapter in respect of cadets and declared members might be modified by the regulations (see section 439).

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Part 2—When the Commission must accept liability for service injuries, diseases and deaths

22 Simplified outline of this Part

The Commission accepts liability for an injury, disease or death under this Part.

The Commission must accept liability if a claim for acceptance of liability has been made under section 319, the injury, disease or death is a service injury, disease or death, and none of the exclusions in Part 4 apply. The Commission is taken to have accepted liability for an injury or disease, and the injury or disease is taken to be a service injury or disease, if liability for the injury or disease has previously been accepted under the DRCA or VEA.

There are 2 standards of proof that the Commission applies in deciding matters under this Chapter (and the rest of the Act), unless the presumption in subsection 27A(1) or (2) (that certain injuries and diseases are attributable to defence service) is relied on to make the decision.

The more beneficial standard of proof (in subsections 335(1) and (2)) applies to some claims that an injury, disease or death is a service injury, disease or death that relates to warlike or non-warlike service. The other standard of proof (in subsection 335(3)) applies to most other decisions under this Chapter.

For some claims for acceptance of liability for an injury, disease or death the standard of proof can only be met if the injury or disease, or the cause of death, is covered by a Statement of Principles (see

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sections 338 and 339). (Chapter 7 has more rules about the Statements of Principles.)

A Statement of Principles is an instrument made under Chapter 9A. The Statement sets out all factors related to defence service that have been found to cause specific injuries, diseases and deaths.

For other claims for acceptance of liability, the Statements of Principles are not relevant.

23 Commission's acceptance of liability for service injuries and diseases

When Commission must accept liability for service injuries and diseases

(1) The Commission must accept liability for an injury sustained, or a disease contracted, by a person if:
  (a) the person's injury or disease is a service injury or disease under section 27; and
  (b) the Commission is not prevented from accepting liability for the injury or disease by Part 4; and
  (c) a claim for acceptance of liability for the injury or disease has been made under section 319.

Note 1: The standard of proof mentioned in subsections 335(1) and (2) applies to claims that the injury or disease is a service injury or disease that relates to warlike or non-warlike service.

Note 2: The standard of proof mentioned in subsection 335(3) applies to the following:
  (a) claims that the injury or disease is a service injury or disease that relates to peacetime service;
  (b) all claims when determining whether a person sustained a particular injury or contracted a particular disease;
  (c) all claims when determining whether the Commission is prevented from accepting liability for the injury or disease by Part 4.

Note 3: Section 335 does not apply when determining whether a person's injury or disease is a service injury or a service disease if the

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presumption in subsection 27A(1) or (2) (that certain injuries and diseases are attributable to defence service) is relied on (see subsection 335(4)).

When Commission must accept liability for service injuries and diseases arising from Commonwealth treatment

(2) The Commission must accept liability for an injury sustained, or a disease contracted, by a person if:

(a) the person's injury or disease is a service injury or disease under section 29 (arising from treatment provided by the Commonwealth); and

(b) a claim for acceptance of liability for the injury or disease has been made under section 319.

Note: The standard of proof mentioned in subsection 335(3) applies to all claims:

(a) that an injury or disease is a service injury or disease under section 29; and

(b) when determining whether a person sustained a particular injury or contracted a particular disease.

When Commission must accept liability for service injuries and diseases arising from aggravations of signs and symptoms

(3) The Commission must accept liability for an injury sustained, or a disease contracted, by a person if:

(a) the person's injury or disease is a service injury or disease under section 30 (aggravations etc. of signs and symptoms); and

(b) the Commission is not prevented from accepting liability for the injury or disease by Part 4; and

(c) a claim for acceptance of liability for the injury or disease has been made under section 319.

Note 1: The standard of proof mentioned in subsections 335(1) and (2) applies to claims that the injury or disease is a service injury or disease that relates to warlike or non-warlike service.

Note 2: The standard of proof mentioned in subsection 335(3) applies to the following:

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(a) claims that an injury or disease is a service injury or disease that relates to peacetime service; and
(b) all claims when determining whether a sign or symptom was aggravated etc.; and
(c) all claims when determining whether the Commission is prevented from accepting liability for the injury or disease by Part 4.

Acceptance of liability for aggravations etc. of injuries and diseases

(4) A reference in this section to acceptance of liability for an injury or disease is taken to include a reference to acceptance of liability for an aggravation of an injury or disease.

Note: The definitions of ***injury*** and ***disease*** exclude aggravations (see section 5).

24 Commission's acceptance of liability for service deaths

When Commission must accept liability for service deaths

(1) The Commission must accept liability for the death of a person if:
(a) the person's death is a service death under section 28; and
(b) the Commission is not prevented from accepting liability for the death by subsection 34(4) or section 35 or 36; and
(c) a claim for acceptance of liability for the death has been made under section 319.

Note 1: The standard of proof mentioned in subsections 335(1) and (2) applies to claims that the death is a service death that relates to warlike or non-warlike service.

Note 2: The standard of proof mentioned in subsection 335(3) applies to the following:
(a) claims that the death is a service death that relates to peacetime service;
(b) all claims when determining whether a person sustained or contracted a particular injury or disease;
(c) all claims when determining the cause of a person's death;
(d) all claims when determining whether the Commission is prevented from accepting liability for the death by subsection 34(4) or section 35 or 36.

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When Commission must accept liability for service deaths arising from Commonwealth treatment

(2) The Commission must accept liability for the death of a person if:

(a) the person's death is a service death under section 29 (service death arising from treatment provided by the Commonwealth); and

(b) a claim for acceptance of liability for the death has been made under section 319.

Note: The standard of proof mentioned in subsection 335(3) applies to all claims:

(a) that a death is a service death under section 29; and

(b) when determining the cause of a person's death.

Commission must accept liability for deaths after being prevented from accepting liability for the injury or disease that resulted in the death

(3) To avoid doubt, the Commission must accept liability for a service death even if the Commission was prevented by section 32 or 33 from accepting liability for a service injury or disease that resulted in the death.

Note: Sections 32 and 33 only prevent the Commission from accepting liability for a service injury or disease, and not a service death.

24A Commission taken to have accepted liability for certain injuries and diseases

(1) This section applies in relation to an injury sustained, or a disease contracted, by a person if:

(a) before the date of commencement, the person made a claim for either of the following in respect of the injury or disease:

(i) compensation under the DRCA;

(ii) a pension under Part II or IV of the VEA; and

(b) as a result of the determination of that claim (including any reconsideration or review of a decision made in relation to that claim):

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(i) if subparagraph (a)(i) applies—liability to pay compensation in respect of the injury or disease was accepted; or

(ii) if subparagraph (a)(ii) applies—it was determined that the person was entitled to be granted a pension in respect of the injury or disease.

(2) For the purposes of this Act, the regulations and any other instrument made under this Act:

(a) the Commission is taken to have accepted liability for the injury or disease under this Chapter; and

(b) the injury or disease is taken to be a service injury, or a service disease, as the case may be.

Note: This means that the person is not required to make a claim under section 319 for acceptance of liability for the injury or disease and the Commission is not required to reassess liability for the injury or disease.

25 Limited effect of acceptance of liability

The Commission's acceptance of liability for an injury, disease or death only has effect for the purposes of this Act.

Note: This means that a person cannot rely on the Commission's acceptance of liability for an injury, disease or death in a common law action against the Commonwealth.

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Part 3—Definitions of service injury, service disease and service death

26 Simplified outline of this Part

This Part defines ***service injury, service disease*** and ***service death***.

An injury, disease or death is a service injury, disease or death if:

(a) it is related to defence service in the ways mentioned in section 27 or 28; or

(b) it resulted from certain treatment provided by the Commonwealth (see section 29); or

(c) an aggravation of, or a material contribution to, a sign or symptom of the injury or disease relates to defence service (see section 30).

However, even if an injury, disease or death is a service injury or disease under this Part, the Commission might be prevented from accepting liability for the injury, disease or death by an exclusion under Part 4.

27 Main definitions of *service injury* and *service disease*

For the purposes of this Act, an injury sustained, or a disease contracted, by a person is a ***service injury*** or a ***service disease*** if one or more of the following apply:

(a) the injury or disease resulted from an occurrence that happened while the person was a member rendering defence service;

(b) the injury or disease arose out of, or was attributable to, any defence service rendered by the person while a member;

Note: Certain injuries and diseases are taken to be attributable to defence service (see subsections 27A(1) and (2)).

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(c) in the opinion of the Commission:

(i) the injury was sustained due to an accident that would not have occurred; or

(ii) the disease would not have been contracted;

but for:

(iii) the person having rendered defence service while a member; or

(iv) changes in the person's environment consequent upon his or her having rendered defence service while a member;

(d) the injury or disease:

(i) was sustained or contracted while the person was a member rendering defence service, but did not arise out of that service; or

(ii) was sustained or contracted before the commencement of a period of defence service rendered by the person while a member, but not while the person was rendering defence service;

and, in the opinion of the Commission, the injury or disease was contributed to in a material degree by, or was aggravated by, any defence service rendered by the person while a member after he or she sustained the injury or contracted the disease;

Note: This paragraph might not cover aggravations of, or material contributions to, signs and symptoms of an injury or disease (see *Repatriation Commission v Yates* (1995) 38 Administrative Law Decisions 80). This is dealt with in section 30.

(da) the injury was sustained while the person was on duty as a member, whether or not as a result of performing that duty;

(e) the injury or disease resulted from an accident that occurred while the person was travelling, while a member rendering peacetime service but otherwise than in the course of duty, on a journey:

(i) to a place for the purpose of performing duty; or

(ii) away from a place of duty upon having ceased to perform duty.

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Note 1: Certain injuries and diseases are taken to be service injuries and service diseases (see section 24A).

Note 2: Sections 338 and 339 do not apply to an injury or disease that is covered by subparagraph (c)(i) or paragraph (da) or (e) of this section.

27A Presumption that certain injuries and diseases are attributable to defence service

Injuries taken to be attributable to defence service

(1) If:

(a) a person has sustained an injury; and

(b) the injury is of a kind specified in a determination under subsection (3) to be an injury attributable to defence service of a kind specified in the determination; and

(c) the person was, at the time the injury was sustained, a member rendering defence service of that kind;

the injury is, for the purposes of paragraph 27(b), taken to be attributable to defence service rendered by the person while a member, unless the contrary is established.

Diseases taken to be attributable to defence service

(2) If:

(a) a person has contracted a disease; and

(b) the disease is of a kind specified in a determination under subsection (3) to be a disease attributable to defence service of a kind specified in the determination; and

(c) the person was, at any time before the disease was contracted, a member rendering defence service of that kind;

the disease is, for the purposes of paragraph 27(b), taken to be attributable to defence service rendered by the person while a member, unless the contrary is established.

Determination by the Commission

(3) The Commission may, by written determination, specify the following:

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(a) one or more kinds of injury that are attributable to one or more kinds of defence service;
(b) one or more kinds of disease that are attributable to one or more kinds of defence service.

(4) Without limiting subsection (3), kinds of defence service may be specified by reference to the period during which the service was rendered.

(5) To avoid doubt, a determination under subsection (3) may specify a kind of injury, or a kind of disease, irrespective of whether a Statement of Principles is, or has been, determined in respect of that kind of injury or that kind of disease.

Variation or revocation of determination

(6) The Commission may, by written determination, vary or revoke a determination under subsection (3).

Determination etc. must be approved by the Minister

(7) A determination, and any variation or revocation of a determination, under subsection (3) has no effect unless the Minister had approved the determination, variation or revocation in writing.

Legislative instruments

(8) A determination, and any variation or revocation of a determination, under subsection (3) prepared by the Commission and approved by the Minister is a legislative instrument made by the Minister on the day on which the determination, variation or revocation is approved.

28 Main definition of *service death*

*Definition of **service death***

(1) For the purposes of this Act, the death of a person is a ***service death*** if one or more of the following apply:

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(a) the death resulted from an occurrence that happened while the person was a member rendering defence service;

(b) the death arose out of, or was attributable to, any defence service rendered by the person while a member;

(c) in the opinion of the Commission, the death was due to:

(i) an accident that would not have occurred; or

(ii) a disease that would not have been contracted;

but for:

(iii) the person having rendered defence service while a member; or

(iv) changes in the person's environment consequent upon his or her having rendered defence service while a member;

(d) the injury or disease from which the person died:

(i) was sustained or contracted while the person was a member rendering defence service, but did not arise out of that service; or

(ii) was sustained or contracted before the commencement of a period of defence service rendered by the person while a member, but not while the person was rendering defence service;

and, in the opinion of the Commission, the injury or disease was contributed to in a material degree by, or was aggravated by, any defence service rendered by the person while a member after he or she sustained the injury or contracted the disease;

(e) the injury or disease from which the person died is an injury or disease that has been determined under section 27, 29 or 30 to be a service injury or a service disease, as the case may be;

Note 1: The effect of this paragraph is that, if the person has died from an injury or disease that has already been determined by the Commission to be a service injury or disease, the death is a service death. Accordingly, the Commission is not required to relate the death to defence service rendered by the person and sections 338 and 339 do not apply.

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Note 2: This paragraph does not apply to certain aggravations etc. of injuries and diseases (see subsection (2)).

(ea) the death occurred while the person was on duty as a member, whether or not as a result of performing that duty;

(f) the death resulted from an accident that occurred while the person was travelling, while a member rendering peacetime service but otherwise than in the course of duty, on a journey:

(i) to a place for the purpose of performing duty; or

(ii) away from a place of duty upon having ceased to perform duty.

Note: Sections 338 and 339 do not apply to a death that is covered by subparagraph (c)(i) or paragraph (ea) or (f) of this subsection.

Aggravations etc. that cease before death

(2) Paragraph (1)(e) does not apply if:

(a) the service injury or disease mentioned in that paragraph is an aggravated injury or disease; and

(b) immediately before the death, the injury or disease was no longer aggravated or contributed to in a material degree.

29 Definitions of *service injury*, *service disease* and *service death* arising from treatment provided by the Commonwealth

Liability for injuries and diseases caused by treatment

(1) For the purposes of this Act, an injury (the ***relevant injury***) sustained, or a disease (the ***relevant disease***) contracted, by a person is a ***service injury*** or a ***service disease*** if:

(a) all of the following apply:

(i) the person receives treatment for an earlier service injury or service disease;

(ii) the treatment is paid for or provided wholly or partly by the Commonwealth;

(iii) as a consequence of that treatment, the person sustains the relevant injury or contracts the relevant disease; or

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(b) the person receives any treatment under regulations made under the *Defence Act 1903* service injury or service disease and as an unintended consequence of that treatment, the person sustains the relevant injury or contracts the relevant disease.

Liability for injuries and diseases aggravated by treatment

(2) For the purposes of this Act, an injury (the ***relevant injury***) sustained, or a disease (the ***relevant disease***) contracted, by a person is a ***service injury*** or a ***service disease*** if:

(a) all of the following apply:

(i) the person receives treatment for an earlier service injury or service disease;

(ii) the treatment is paid for or provided wholly or partly by the Commonwealth;

(iii) as a consequence of that treatment, the relevant injury or relevant disease, or a sign or symptom of the relevant injury or relevant disease, is aggravated by the treatment; or

(b) the person receives any treatment under regulations made under the *Defence Act 1903* and, as an unintended consequence of that treatment, the relevant injury or relevant disease, or a sign or symptom of the relevant injury or relevant disease, is aggravated by the treatment.

Liability for deaths caused by treatment

(3) For the purposes of this Act, the death of a person is a ***service death*** if:

(a) either:

(i) the person receives treatment under this Act for a service injury or disease for a service injury or service disease and the treatment is paid for or provided wholly or partly by the Commonwealth; or

(ii) the person receives any treatment under regulations made under the *Defence Act 1903*; and

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(b) as a consequence of that treatment, the person dies.

30 Definitions of *service injury* and *service disease* for aggravations etc. of signs and symptoms

For the purposes of this Act, an injury sustained, or a disease contracted, by a person is a ***service injury*** or a ***service disease*** if:

(a) the injury or disease:

(i) was sustained or contracted while the person was a member rendering defence service, but did not arise out of that service; or

(ii) was sustained or contracted before the commencement of a period of defence service rendered by the person while a member, but not while the person was rendering defence service; and

(b) in the opinion of the Commission, a sign or symptom of the injury or disease was contributed to in a material degree by, or was aggravated by, any defence service rendered by the person while a member after he or she sustained the injury or contracted the disease.

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Part 4—When the Commission is prevented from accepting liability for service injuries, diseases and deaths

31 Simplified outline of this Part

Even if the Commission decides that an injury, disease or death is a service injury, disease or death, the Commission might be prevented from accepting liability for that injury, disease or death because of an exclusion under this Part.

There are 5 kinds of exclusions. They relate to the following:

(a) serious defaults or wilful acts etc.;
(b) reasonable counselling about a person's performance as a member;
(c) false representations;
(d) travel during peacetime service;
(e) the use of tobacco products.

The Commission applies the standard of proof mentioned in subsection 335(3) in deciding whether the exclusions apply.

32 Exclusions relating to serious defaults or wilful acts etc.

Exclusion of injuries or diseases resulting from serious default or wilful acts etc.

(1) The Commission must not accept liability for an injury sustained, or a disease contracted, by a person if:

(a) the injury or disease resulted from the person's serious default or wilful act while a member; or

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(b) the injury or disease arose from:

(i) a serious breach of discipline committed by the person while a member; or

(ii) an occurrence that happened while the person was committing a serious breach of discipline while a member; or

(c) the injury or disease was intentionally self-inflicted while the person was a member;

except if the injury or disease results in serious and permanent impairment.

(2) For the purpose of paragraph (1)(a), an injury or disease is taken to have resulted from a person's serious default or wilful act if:

(a) the person consumed alcohol or took a drug (other than a drug administered by a person legally authorised to administer the drug or a drug legally obtained and taken in accordance with the directions provided with the drug); and

(b) the injury or disease resulted from being under the influence of the alcohol or drug.

This subsection does not otherwise limit paragraph (1)(a).

Exclusion of aggravations etc. resulting from serious default etc.

(3) The Commission must not accept liability for an injury sustained, or a disease contracted, by a person if:

(a) the injury or disease has been contributed to in a material degree, or aggravated, by defence service; and

(b) the material contribution or aggravation:

(i) resulted from the serious default or wilful act of the person while a member; or

(ii) arose from a serious breach of discipline committed by the person while a member; or

(iii) arose from an occurrence that happened while the person was committing a serious breach of discipline while a member; or

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(iv) was intentionally self-inflicted while the person was a member;

except if the aggravation or material contribution results in serious and permanent impairment.

Exclusion of aggravations etc. of signs or symptoms resulting from serious default etc.

(4) The Commission must not accept liability for an injury sustained, or a disease contracted, by a person if:

(a) a sign or symptom of the injury or disease has been contributed to in a material degree, or aggravated, by defence service; and

(b) the material contribution or aggravation:

(i) resulted from the serious default or wilful act of the person while a member; or

(ii) arose from a serious breach of discipline committed by the person while a member; or

(iii) arose from an occurrence that happened while the person was committing a serious breach of discipline while a member; or

(iv) was intentionally self-inflicted while the person was a member;

except if the aggravation or material contribution results in serious and permanent impairment.

(5) For the purpose of subparagraph (3)(b)(i) or (4)(b)(i), a material contribution or aggravation is taken to have resulted from a person's serious default or wilful act if:

(a) the person consumed alcohol or took a drug (other than a drug administered by a person legally authorised to administer the drug or a drug legally obtained and taken in accordance with the directions provided with the drug); and

(b) the material contribution or aggravation results from being under the influence of the alcohol or drug.

This subsection does not otherwise limit subparagraph (3)(b)(i) or (4)(b)(i).

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Section 33

33 Exclusions relating to reasonable counselling about performance etc.

Injuries or diseases resulting from reasonable counselling about performance etc.

(1) The Commission must not accept liability for an injury sustained, or a disease contracted, by a person if the injury or disease resulted from:
  (a) reasonable and appropriate counselling in relation to the person's performance as a member; or
  (b) a failure to obtain a promotion, transfer or benefit in relation to the person's service as a member.

Aggravations etc. of injuries or diseases resulting from reasonable counselling about performance etc.

(2) The Commission must not accept liability for an injury sustained, or a disease contracted, by a member if:
  (a) the injury or disease was contributed to in a material degree, or aggravated, by defence service; and
  (b) the material contribution or aggravation resulted from:
    (i) reasonable and appropriate counselling in relation to the person's performance as a member; or
    (ii) a failure to obtain a promotion, transfer or benefit in relation to the person's service as a member.

Aggravations etc. of signs and symptoms of injuries or diseases resulting from reasonable counselling about performance etc.

(3) The Commission must not accept liability for an injury sustained, or a disease contracted, by a member if:
  (a) a sign or symptom of the injury or disease was contributed to in a material degree, or aggravated, by defence service; and
  (b) the material contribution or aggravation resulted from:
    (i) reasonable and appropriate counselling in relation to the person's performance as a member; or

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(ii) a failure to obtain a promotion, transfer or benefit in relation to the person's service as a member.

34 Exclusions of injuries, diseases and deaths relating to certain false representations

Injuries or diseases

(1) The Commission must not accept liability for an injury sustained, or a disease contracted, by a person, if the person made a wilful and false representation, in connection with his or her defence service or proposed defence service, that he or she did not suffer, or had not previously suffered, from that injury or disease.

Aggravations etc. of injuries or diseases

(2) The Commission must not accept liability for an injury sustained, or a disease contracted, by a person, if:

(a) the injury or disease was contributed to in a material degree, or aggravated, by defence service; and

(b) the person made a wilful and false representation, in connection with his or her defence service or proposed defence service, that he or she did not suffer, or had not previously suffered, from that injury or disease.

Aggravations etc. of signs and symptoms of injuries or diseases

(3) The Commission must not accept liability for an injury sustained, or a disease contracted, by a person, if:

(a) a sign or symptom of the injury or disease was contributed to in a material degree, or aggravated, by defence service; and

(b) the person made a wilful and false representation, in connection with his or her defence service or proposed defence service, that he or she did not suffer, or had not previously suffered, from that injury or disease.

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Deaths

(4) The Commission must not accept liability for the death of a person if the person made a wilful and false representation, in connection with his or her defence service or proposed defence service, that he or she did not suffer, or had not previously suffered, from the injury or disease that resulted in his or her death.

35 Exclusions relating to travel

Commission not to accept liability for injuries etc. resulting from certain peacetime accidents

(1) This section only applies in respect of an injury, disease or death of a person that relates to peacetime service rendered by the person as a member.

Note: This section applies if the injury, disease or death is a service injury, disease or death because of the application of any of sections 27, 28 and 30 (not only paragraphs 27(e) and 28(1)(f)).

(2) The Commission must not accept liability for:
(a) an injury sustained, or a disease contracted, by a person, or the death of a person; or
(b) an injury or a disease that has been aggravated, or materially contributed to; or
(c) an injury or disease, a sign or symptom of which has been aggravated, or materially contributed to;

if the injury, disease, death, aggravation or material contribution resulted from the kinds of accidents mentioned in subsection (3), (4) or (5).

Substantial delay commencing journey

(3) The Commission must not accept liability if the injury, disease, death, aggravation or material contribution resulted from an accident that occurred while the person was a member travelling on a journey from the person's place of duty if the person delayed

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commencing the journey for a substantial time after he or she ceased to perform duty at that place, unless:

(a) the delay was for a reason connected with the performance of the person's duties; or

(b) in the circumstances of the particular case:

(i) the nature of the risk of the injury, disease, death, aggravation or material contribution occurring was not substantially changed; and

(ii) the extent of that risk was not substantially increased;

by that delay or by anything that happened during that delay.

Routes that are not reasonably direct

(4) The Commission must not accept liability if the injury, disease, death, aggravation or material contribution resulted from an accident that occurred while the person was a member travelling on a journey, or a part of a journey, by a route that was not reasonably direct having regard to the means of transport used, unless:

(a) the journey, or that part of the journey, was made by that route for a reason connected with the performance of the person's duties; or

(b) in the circumstances of the particular case:

(i) the nature of the risk of the injury, disease, death, aggravation or material contribution occurring was not substantially changed; and

(ii) the extent of that risk was not substantially increased;

by reason that the journey, or that part of the journey, was made by that route.

Substantial interruptions to journeys

(5) The Commission must not accept liability if the injury, disease, death, aggravation or material contribution resulted from an accident that occurred while the person was a member travelling on a part of a journey made after a substantial interruption of the journey, unless:

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(a) the interruption was made for a reason connected with the performance of the person's duties; or

(b) in the circumstances of the particular case:

(i) the nature of the risk of the injury, disease, death, aggravation or material contribution occurring was not substantially changed; and

(ii) the extent of that risk was not substantially increased;

by reason of that interruption.

36 Exclusion relating to use of tobacco products

The Commission must not accept liability for:

(a) an injury sustained, or a disease contracted, by a person, or the death of a person; or

(b) an injury or a disease that has been aggravated, or materially contributed to; or

(c) an injury or disease, a sign or symptom of which has been aggravated, or materially contributed to;

if the injury, disease, death, aggravation or material contribution is related to defence service:

(d) in the case of a person who had not used tobacco products before 1 January 1998—only because the person used tobacco products after 31 December 1997; or

(e) in the case of a person who had used tobacco products before 1 January 1998—only because the person increased their use of tobacco products after 31 December 1997.

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Chapter 3—Rehabilitation

Part 1—General provisions

Division 1—Simplified outline of this Chapter

37 Simplified outline of this Chapter

This Chapter provides for the following for certain current and former members suffering a service injury or disease:

(a) rehabilitation programs;
(b) assistance in finding suitable defence or civilian work;
(c) assistance in moving from defence service to civilian life.

This Chapter also provides for rehabilitation programs for certain current and former members who:

(a) have made a claim for acceptance of liability by the Commission for a service injury or disease, where the claim has not been determined; or
(b) have not made such a claim and who need not have a service injury or disease.

The capacity for rehabilitation of a person with a service injury or disease is assessed under Part 2. If the person is capable of rehabilitation, he or she may be required to undertake a rehabilitation program under that Part.

Part 2 also provides for rehabilitation for certain persons who have made a claim for acceptance of liability by the Commission for a service injury or disease, where the claim has not been determined.

Part 2A provides for a non-liability rehabilitation pilot for certain members or former members who have not made such a claim and who need not have a service injury or disease.

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Section 37

Under Part 3, a person who is undertaking a rehabilitation program, or a person who cannot undertake a program, can have his or her home or place of work etc. altered or an aid or appliance provided.

All members and former members who are incapacitated for service or work are assisted in finding suitable work under Part 4.

A case manager is appointed under Part 5 to assist a Permanent Forces member, a continuous full-time Reservist or a part-time Reservist move to civilian life if the person is likely to be discharged from the Defence Force.

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Division 2—Aim of rehabilitation

38 Aim of rehabilitation

The aim of rehabilitation is to maximise the potential to restore a person who has an impairment, or an incapacity for service or work, as a result of an injury or disease to at least the same physical and psychological state, and at least the same social, vocational and educational status, as he or she had before the injury or disease.

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Division 3—Definitions

39 Definition of *rehabilitation authority*

(1) The Chief of the Defence Force is a ***rehabilitation authority*** for the purposes of this Chapter.

(2) The Commission is a ***rehabilitation authority*** for the purposes of this Chapter.

(3) The ***rehabilitation authority*** for a person at a time is:

(a) subject to paragraph (aa), the Chief of the Defence Force for a time when the person:

(i) is a Permanent Forces member, a continuous full-time Reservist or a part-time Reservist; and

(ii) has not been identified by or on behalf of the Chief of the Defence Force as being likely to be discharged from the Defence Force for medical reasons; or

(aa) if the Commission, after considering advice from the Chief of the Defence Force, determines, in writing, that the Commission is to be the rehabilitation authority for a specified person at a specified time—the Commission for that time; or

(b) the Commission for any other time.

(4) A determination made under paragraph (3)(aa) is not a legislative instrument.

40 Rule if rehabilitation authority for a person changes

(1) This section applies if a person's rehabilitation authority (the ***original rehabilitation authority***) changes to another rehabilitation authority (the ***new rehabilitation authority***) because of section 39.

(2) If:

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(a) under subsection 44(2), the person requests the original rehabilitation authority to carry out an assessment of the person's capacity for rehabilitation; and

(b) the rehabilitation authority changes before the assessment begins;

the person's request is taken to have been made to the new rehabilitation authority.

(3) A determination of the original rehabilitation authority that is in force immediately before the rehabilitation authority changes has effect as a determination of the new rehabilitation authority. The new rehabilitation authority is responsible for giving effect to the determination.

41 Other definitions

(1) In this Chapter:

approved program provider means:

(a) a person or body that is an approved program provider for the purposes of the *Safety, Rehabilitation and Compensation Act 1988*; or

(b) a person nominated in writing by a rehabilitation authority, being a person the rehabilitation authority is satisfied has appropriate skills and expertise to design and provide rehabilitation programs.

approved rehabilitation program means a rehabilitation program determined under section 51 for a person by the person's rehabilitation authority.

rehabilitation program means a program that consists of or includes any one or more of the following:

(a) medical, dental, psychiatric and hospital services (whether on an in-patient or out-patient basis);

(b) physical training and exercise;

(c) physiotherapy;

(d) occupational therapy;

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(e) vocational assessment and rehabilitation;
(f) counselling;
(g) psycho-social training.

vocational assessment and rehabilitation consists of or includes any one or more of the following:

(a) assessment of transferable skills;
(b) functional capacity assessment;
(c) workplace assessment;
(d) vocational counselling and training;
(e) review of medical factors;
(f) training in resume preparation, job-seeker skills and job placement;
(g) provision of workplace aids and equipment.

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Part 2—Rehabilitation programs—general

Division 1—Application of Part

42 Simplified outline of this Part

This Part applies to a person who is incapacitated for service or work, or who is impaired, as a result of a service injury or disease.

Most decisions under this Part are made by the person's rehabilitation authority. The rehabilitation authority is either the Chief of the Defence Force or the Commission.

The rehabilitation authority, either on its own initiative or on the person's request, carries out an initial assessment of the person's capacity for rehabilitation. The person might be required to undergo an examination (paid for by the Commonwealth) as part of the assessment. (Compensation can be paid for costs incurred in travelling to the examination.)

Once the assessment is done, the rehabilitation authority decides if the person should undertake a rehabilitation program (provided by an approved program provider). In certain cases, the rehabilitation authority can stop or vary the program once it has begun.

A person's right to compensation can be suspended if the person fails to undergo an examination or fails to undertake the program as required.

This Part also provides for rehabilitation for certain persons who have made a claim for acceptance of liability by the Commission for a service injury or disease, where the claim has not been determined.

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43 Persons to whom this Part applies

Commission has accepted liability for service injury or disease

(1) This Part applies to a person at a time if, at that time:
  (a) the person is incapacitated for service or work, or has an impairment, as a result of a service injury or disease; and
  (b) the Commission has accepted liability for the injury or disease.

Note: The Commission is taken to have accepted liability for an injury or disease in certain circumstances (see section 24A).

(2) To avoid doubt, this Part applies to a person who is incapacitated or impaired as a result of an aggravated injury or disease even if the incapacity or impairment resulted from the original injury or disease and not from the aggravation or material contribution.

Claim for acceptance of liability for service injury or disease not determined

(3) This Part also applies to a person if:
  (a) the person has made a claim of a kind referred to in paragraph 319(1)(a); and
  (b) the Commission has not determined the claim; and
  (c) the person is included in a class of persons determined in an instrument under subsection (4); and
  (d) the Commission has determined, in writing, that this Part applies to the person.

(4) The Commission may, by legislative instrument, determine a class of persons for the purposes of paragraph (3)(c).

(5) A determination under paragraph (3)(d) is not a legislative instrument.

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Division 2—Assessment of a person's capacity for rehabilitation

44 When an assessment may or must be carried out

Assessments on rehabilitation authority's initiative

(1) The rehabilitation authority for a person to whom this Part applies may, on its own initiative, carry out an initial assessment or a further assessment of the person's capacity for rehabilitation.

Requests for assessments

(2) A person to whom this Part applies may request his or her rehabilitation authority to carry out an initial assessment or a further assessment of his or her capacity for rehabilitation.

(3) The rehabilitation authority:
   (a) must carry out an initial assessment; and
   (b) may carry out a further assessment;
   if the person requests the rehabilitation authority to do so.

Requirement to carry out assessment before ceasing or varying a program

(4) The rehabilitation authority must carry out an assessment before ceasing or varying a rehabilitation program under section 53.

45 What may be done as part of an assessment

(1) This section applies if the person's rehabilitation authority carries out an assessment under section 44 of the person's capacity for rehabilitation.

(2) The rehabilitation authority may seek the assistance of a person the authority is satisfied has suitable qualifications or expertise to provide assistance.

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(3) The rehabilitation authority may take into account any relevant information of which it is aware.

(4) The rehabilitation authority may require the person to undergo an examination under section 46.

46 Requirements for examinations

(1) This section applies if the person's rehabilitation authority requires the person to undergo an examination.

(2) The examination is to be carried out by an examiner nominated by the rehabilitation authority whom the authority is satisfied has suitable qualifications or expertise to carry out the examination.

(3) The examiner must give a written report of the examination to the rehabilitation authority. The report must include:
  (a) an assessment of the person's capacity for rehabilitation; and
  (b) if the person has a capacity for rehabilitation—the kinds of rehabilitation from which the person would benefit; and
  (c) any other information relating to the provision of a rehabilitation program for the person that the rehabilitation authority requires.

(4) The Commonwealth is liable to pay the cost of conducting the examination.

47 Compensation for journey and accommodation costs

The Commonwealth is liable to pay compensation for any costs reasonably incurred if:
  (a) the costs are incurred:
    (i) in making a necessary journey in connection with the examination; or
    (ii) in remaining, for the purpose of the examination, at a place to which the person has made a journey for that purpose; and

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(b) a claim for compensation in respect of the person has been made under section 319.

Note: This section might be affected by section 50 or 52 (failure to undergo examination or rehabilitation program).

48 Amount of compensation for journey and accommodation costs

(1) The amount of compensation that the Commonwealth is liable to pay under section 47 is the amount determined by the rehabilitation authority to be the amount reasonably incurred in making the journey or remaining at the place.

(2) In determining the amount, the rehabilitation authority must have regard to:
(a) the means of transport available to the person for the journey; and
(b) the route or routes by which the person could have travelled; and
(c) the accommodation available to the person.

49 Whom the compensation is payable to

(1) Compensation under section 47 for costs reasonably incurred is payable to:
(a) the person who made the claim for compensation; or
(b) if that person so directs:
(i) the person who provided services in connection with the journey or accommodation; or
(ii) any other person who incurred the cost of services in connection with the journey or accommodation.

Note: A special rule applies if there is a trustee under section 432.

(2) A payment under section 47 to a person who provided services in connection with the journey or accommodation discharges any liability of any other person for the cost of those services to the extent of the payment.

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50 Consequences of failure to undergo an examination

(1) If the rehabilitation authority for a person requires the person to undergo an examination under section 45 and the person:

(a) refuses or fails to undergo the examination; or

(b) in any way obstructs the examination;

the rehabilitation authority may determine that the person's right to compensation (but not the person's right to treatment or compensation for treatment under Chapter 6) under this Act is suspended until the examination takes place.

Note: Subsection (6) provides that this section does not apply to a person to whom this Part applies because of subsection 43(3) (claim for acceptance of liability not determined).

(2) A determination under subsection (1) must not be made in relation to a refusal or failure to undergo the examination if, before the time fixed for the examination, the person gives to the rehabilitation authority evidence of a reasonable excuse for the refusal or failure.

(3) The rehabilitation authority must determine that the suspension under subsection (1) is terminated from a date determined by the rehabilitation authority if, within 14 days after the date fixed for the examination, the person gives to the rehabilitation authority evidence of a reasonable excuse for the refusal, failure or obstruction.

(4) If a determination under subsection (1) is made by a delegate of the rehabilitation authority, the rehabilitation authority must ensure that any determination terminating the suspension under subsection (3) also made by a delegate of the rehabilitation authority is made by a delegate other than a delegate who was involved in making the determination under subsection (1).

(5) If a person's right to compensation is suspended under subsection (1), compensation is not payable during or in respect of the period of the suspension.

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(6) This section does not apply to a person to whom this Part applies because of subsection 43(3) (claim for acceptance of liability not determined).

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Division 3—Provision of rehabilitation programs

51 Rehabilitation authority may determine that a person is to undertake a rehabilitation program

(1) The rehabilitation authority for a person to whom this Part applies may determine that the person is to undertake a rehabilitation program specified in the determination if an assessment has been made under section 44 of the person's capacity for rehabilitation.

(2) In making a determination under subsection (1) in respect of the person, the person's rehabilitation authority is to have regard to the following:

(a) any written report in respect of the person under subsection 46(3);

(b) any reduction in the future liability of the Commonwealth to pay or provide compensation if the program is undertaken;

(c) the cost of the program;

(d) any improvement in the person's opportunity to be engaged in work after completing the program;

(e) the person's attitude to the program;

(f) the relative merits of any alternative and appropriate rehabilitation program;

(g) any other matter the rehabilitation authority considers relevant.

(3) If the rehabilitation authority for a person makes a determination under subsection (1) that a person is to undertake a rehabilitation program, the rehabilitation authority must make arrangements with an approved program provider for the provision of the program for the person.

Note: The person might also be entitled to have his or her home altered or aids or appliances provided under Part 3.

(4) For the purposes of designing or providing a rehabilitation program:

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(a) the rehabilitation authority or approved program provider concerned may seek the assistance of persons with suitable qualifications or expertise in the design or provision of rehabilitation programs; and

(b) the rehabilitation authority or approved program provider concerned may take into account any relevant information of which it is aware or that is brought to its attention.

(5) The cost of a rehabilitation program provided for a person under this section is to be paid by the Commonwealth.

52 Consequences of failure to undertake a rehabilitation program

(1) If the rehabilitation authority for a person requires the person to undertake a rehabilitation program under section 51, and the person refuses or fails to undertake the rehabilitation program, the rehabilitation authority may determine that the person's right to compensation (but not the person's right to treatment or compensation for treatment under Chapter 6) under this Act is suspended until the person undertakes the rehabilitation program.

Note: Subsection (6) provides that this section does not apply to a person to whom this Part applies because of subsection 43(3) (claim for acceptance of liability not determined).

(2) A determination under subsection (1) must not be made in relation to a refusal or failure to undertake the rehabilitation program if, before the date fixed for starting the rehabilitation program, the person gives to the rehabilitation authority evidence of a reasonable excuse for the refusal or failure.

(3) The rehabilitation authority must determine that the suspension under subsection (1) is terminated from a date determined by the rehabilitation authority if, within 14 days after the date fixed for starting the rehabilitation program, the person gives to the rehabilitation authority evidence of a reasonable excuse for the refusal or failure.

(4) If a determination under subsection (1) is made by a delegate of the rehabilitation authority, the rehabilitation authority must ensure

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that any determination terminating the suspension under subsection (3) also made by a delegate of the rehabilitation authority is made by a delegate other than a delegate who was involved in making the determination under subsection (1).

(5) If a person's right to compensation is suspended under subsection (1), compensation is not payable during or in respect of the period of the suspension.

(6) This section does not apply to a person to whom this Part applies because of subsection 43(3) (claim for acceptance of liability not determined).

53 Cessation or variation of a rehabilitation program

(1) This section applies if:
  (a) the rehabilitation authority for a person has made a determination under subsection 51(1) that the person is to undertake a rehabilitation program; and
  (b) an approved program provider has commenced providing the rehabilitation program.

(2) The rehabilitation authority may, on its own initiative or on written application by the person, determine that:
  (a) the rehabilitation program cease; or
  (b) the rehabilitation program be varied.

(3) Before making a determination under subsection (2), the rehabilitation authority must:
  (a) undertake an assessment under section 44 of the person's capacity for rehabilitation; and
  (b) consult the person about the proposed determination.

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Part 2A—Non-liability rehabilitation pilot

53A Simplified outline of this Part

There is a non-liability rehabilitation pilot for certain members or former members who:

(a) have not made a claim for acceptance of liability by the Commission for a service injury or disease; and

(b) need not have a service injury or disease.

For these members or former members, a rehabilitation program is to be provided that consists of either or both of the following:

(a) vocational assessment and rehabilitation;

(b) psycho-social training.

53B Persons to whom this Part applies

(1) This Part applies to a person if:

(a) either:

(i) the person is a member; or

(ii) the person is a former member but the person was a member at any time on or after 1 December 1988; and

(b) the person has not made a claim of a kind referred to in paragraph 319(1)(a); and

(c) the person is included in a class of persons determined in an instrument under section 53D; and

(d) the Commission has determined, in writing, that this Part applies to the person.

(2) A determination under paragraph (1)(d) is not a legislative instrument.

(3) The member or former member need not have sustained a service injury or contracted a service disease.

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53C Provision of rehabilitation programs

(1) The rehabilitation authority for a person to whom this Part applies must make arrangements with an approved program provider for the provision of a rehabilitation program for the person that consists of either or both of the following:
  (a) vocational assessment and rehabilitation;
  (b) psycho-social training.

(2) For the purposes of designing or providing the rehabilitation program:
  (a) the rehabilitation authority or approved program provider concerned may seek the assistance of persons with suitable qualifications or expertise in the design or provision of rehabilitation programs; and
  (b) the rehabilitation authority or approved program provider concerned may take into account any relevant information of which it is aware or that is brought to its attention.

Conditions and limits

(3) A rehabilitation program under this section is subject to:
  (a) the conditions in relation to the provision of the program that are determined in an instrument under section 53D; and
  (b) the limits (whether financial or otherwise) in relation to the provision of the program that are determined in that instrument.

Cost of rehabilitation program to be paid by Commonwealth

(4) The cost of a rehabilitation program under this section is to be paid by the Commonwealth.

Section 38 does not apply

(5) Section 38 does not apply for the purposes of this Part.

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53D Legislative instrument

(1) The Commission may, by legislative instrument:

(a) determine a class of persons for the purposes of paragraph 53B(1)(c); and

(b) determine conditions in relation to the provision of a rehabilitation program for the purposes of paragraph 53C(3)(a); and

(c) determine limits (whether financial or otherwise) in relation to the provision of a rehabilitation program for the purposes of paragraph 53C(3)(b).

(2) Without limiting subsection (1), a determination under that subsection may make provision for and in relation to an approved program provider or the Commission being satisfied of one or more specified matters.

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Part 3—Alterations, aids and appliances relating to rehabilitation

Division 1—Preliminary

54 Simplified outline of this Part

This Part applies to a person with an impairment from a service injury or disease who is either undertaking a rehabilitation program or who cannot undertake a program.

If it is reasonably required for the person, the Commission can:

(a) alter the person's home or work; or

(b) alter articles used by the person; or

(c) repair or provide aids or appliances for the person.

55 Persons to whom Part applies

(1) This Part applies to a person if:

(a) the person has an impairment as a result of a service injury or disease; and

(b) the Commission has accepted liability for the injury or disease; and

(c) the person:

(i) is undertaking, or has completed, an approved rehabilitation program in respect of the impairment; or

(ii) has been assessed under section 44 as not having the capacity for rehabilitation.

Note: The Commission is taken to have accepted liability for an injury or disease in certain circumstances (see section 24A).

(2) To avoid doubt, this Part applies to a person who has an impairment as a result of an aggravated injury or disease even if the impairment resulted from the original injury or disease and not from the aggravation or material contribution.

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Division 2—Alterations, aids and appliances relating to rehabilitation

56 Alterations, aids and appliances relating to rehabilitation

(1) The Commission may do the following for a person to whom this Part applies:

(a) alter the person's place of residence, education, work or service, or articles used by the person;

(b) provide aids or appliances for use by the person; or

(c) repair or replace any aids or appliances for use by the person;

if the alterations, aids or appliances are reasonably required by the person.

Note: Section 58 sets out the matters that the Commission must consider in determining if an alteration, aid or appliance is reasonably required by the person.

(2) The Commonwealth is liable to pay compensation for any costs reasonably incurred by a person to whom this Part applies if the costs are incurred in respect of alterations, aids or appliances of a kind mentioned in subsection (1).

(3) A claim for compensation in respect of the person must have been made under section 319.

Note: This section might be affected by section 50 or 52 (failure to undergo examination or rehabilitation program).

57 Amount of compensation for alterations, aids and appliances

The amount of compensation that the Commonwealth is liable to pay under subsection 56(2) is the amount determined by the Commission to be the amount reasonably incurred in respect of the alterations, aids or appliances.

Note: Section 58 sets out the matters that the Commission must consider in determining the amount of compensation.

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58 Matters to be considered in determining matters relating to alterations, aids and appliances

(1) This section applies for the purposes of:
  (a) determining whether an alteration, aid or appliance is reasonably required by a person under section 56; and
  (b) the amount of compensation under section 57.

(2) The Commission must have regard to:
  (a) the likely period during which the alteration, article, aid or appliance will be required; and
  (b) any difficulties faced by the person in gaining access to, or enjoying reasonable freedom of movement in, his or her place of residence, education, work or service; and
  (c) whether arrangements can be made for hiring the article, aid or appliance concerned; and
  (d) if the person has previously received compensation under this section in respect of an alteration of his or her place of residence and has later disposed of that place of residence—whether the value of that place of residence was increased as a result of the alteration; and
  (e) if the person is a Permanent Forces member or a continuous full-time Reservist:
    (i) the length of time that the person is likely to continue to serve as a Permanent Forces member or a continuous full-time Reservist; and
    (ii) whether the provision of an alteration, article, aid or appliance would increase that length of time.

59 Whom compensation for alterations etc. is payable to

(1) Compensation under subsection 56(2) for costs reasonably incurred is payable to:
  (a) the person who made the claim for compensation; or
  (b) if that person so directs:
    (i) the person who provided services in connection with the alteration, aids or appliances; or

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(ii) any other person who incurred the cost of services in connection with the alteration, aids or appliances.

Note: A special rule applies if there is a trustee under section 432.

(2) A payment under subsection 56(2) to a person who provided services in connection with the alteration, aids or appliances discharges any liability of any other person for the cost of the services to the extent of the payment.

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Part 4—Assistance in finding suitable work

60 Simplified outline of this Part

All members and former members who are incapacitated for service or work from a service injury or disease are assisted in finding suitable work under this Part.

The work might be work in the Defence Force or civilian work.

The employers providing civilian work may be entitled to payments under a scheme determined by the Commission.

61 Assistance in finding suitable work for full-time members

(1) This section applies if:
  (a) a person is a Permanent Forces member or a continuous full-time Reservist; and
  (b) the person is incapacitated for service or work as a result of a service injury or disease for which the Commission has accepted liability.

(2) To avoid doubt, this section applies to a person who is incapacitated as a result of an aggravated injury or disease even if the incapacity resulted from the original injury or disease and not from the aggravation or material contribution.

(3) The person's rehabilitation authority must take all reasonable steps to:
  (a) if the person is a Permanent Forces member who has not been identified by or on behalf of the Chief of the Defence Force as being likely to be discharged from the Permanent Forces for medical reasons—assist the person to find suitable work within the Permanent Forces; or

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(b) if the person is a continuous full-time Reservist who has not been identified by or on behalf of the Chief of the Defence Force as being likely to be discharged from the Reserves for medical reasons—assist the person to find suitable work as a continuous full-time Reservist; or

(c) if the person has been identified by or on behalf of the Chief of the Defence Force as being likely to be discharged from the Defence Force for medical reasons—assist the person to find suitable civilian work.

Note: A person who has been identified as being likely to be discharged from the Defence Force is entitled to a case manager (see section 64).

62 Assistance in finding suitable work for other members and former members

(1) This section applies if:

(a) a person:

(i) is a part-time Reservist, a cadet or a declared member; or

(ii) is a former member; and

(b) the person is incapacitated for service or work as a result of a service injury or disease for which the Commission has accepted liability.

Note: The Commission is taken to have accepted liability for an injury or disease in certain circumstances (see section 24A).

(2) To avoid doubt, this section applies to a person who is incapacitated as a result of an aggravated injury or disease even if the incapacity resulted from the original injury or disease and not from the aggravation or material contribution.

(3) The person's rehabilitation authority must take all reasonable steps to assist the person to find suitable civilian work.

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62A Scheme may provide for payments to employers

(1) The Commission may, in writing, determine a scheme for and in relation to the making of payments to employers in respect of the provision by the employers of suitable civilian work to persons as mentioned in paragraph 61(3)(c) and subsection 62(3).

Scheme must be approved by the Minister

(2) The scheme has no effect unless the Minister has approved it in writing.

Variation or revocation of scheme

(3) The Commission may, by written determination, vary or revoke the scheme that is in force under this section.

(4) A determination under subsection (3) has no effect unless the Minister has approved it in writing.

Legislative instruments

(5) A determination under subsection (1) or (3) made by the Commission and approved by the Minister is a legislative instrument made by the Minister on the day on which the determination is approved.

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Part 5—Transition management

63 Simplified outline of this Part

Under this Part, a case manager is appointed to assist a Permanent Forces member, a continuous full-time Reservist or a part-time Reservist move from the Defence Force to civilian life if the member or Reservist is likely to be discharged from the Defence Force for medical reasons (whether or not as a result of a service injury or disease).

64 Transition management

(1) This section applies to a person if:

(a) the person is a Permanent Forces member, a continuous full-time Reservist or a part-time Reservist; and

(b) the person has been identified by or on behalf of the Chief of the Defence Force as being likely to be discharged from the Defence Force for medical reasons.

(2) The Chief of the Defence Force must appoint a case manager for the person.

(3) The role of the case manager is to assist the person in the transition to civilian life, including by advising the person about entitlements and services for which the person may be eligible as a member or former member, and about how to obtain access to such entitlements and services.

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Section 65

Chapter 4—Compensation for members and former members

Part 1—Simplified outline of this Chapter

65 Simplified outline of this Chapter

This Chapter provides for compensation and other benefits to be provided for current and former members who suffer a service injury or disease or have been awarded certain decorations in respect of service rendered.

Part 2 provides for compensation to be provided for current and former members who have suffered a permanent impairment.

Part 3 provides for compensation to be provided for current members who are incapacitated for service from a service injury or disease. Current part-time Reservists, cadets and declared members who are incapacitated for work can also be paid compensation under that Part.

Part 4 provides for compensation to be provided for former members who are incapacitated for work from a service injury or disease.

Part 5 contains rules for adjusting the amount of compensation the Commonwealth is liable to pay under Parts 3 and 4.

Some former members who have suffered a serious impairment from an injury or disease can choose to be paid a Special Rate Disability Pension under Part 6 instead of compensation under Part 4.

Part 7 provides for additional compensation and benefits to be provided, such as compensation to modify vehicles, and

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compensation for household and attendant care services and damage to a member's medical aid. Part 7 also provides for the payment of an Additional Disablement Amount, MRCA supplement, Victoria Cross allowance and decoration allowance.

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Part 2—Permanent impairment

66 Simplified outline of this Part

Compensation is payable for permanent impairment that occurs as a result of one or more service injuries or diseases if the degree of that impairment is above a certain level.

The level of impairment is measured in impairment points according to a guide prepared by the Commission.

Interim compensation can be payable to a person whose condition has not stabilised.

The compensation is payable weekly unless the person chooses to convert some or all of the weekly amount to a lump sum.

A severely impaired person who has a dependent child is entitled to an additional lump sum.

67 Guide to determining impairment and compensation

(1) The Commission may determine, in writing, a guide setting out:
  (a) criteria to be used in deciding the degree of impairment of a person resulting from a service injury or disease; and
  (b) methods by which the degree of that impairment can be expressed in impairment points on a scale from 0 to 100; and
  (c) criteria to be used in assessing the effect of a service injury or disease on a person's lifestyle; and
  (d) methods by which the effect of a service injury or disease on a person's lifestyle can be expressed as a numerical rating; and
  (e) methods by which the impairment points of a person, and the effect on a person's lifestyle, from a service injury or disease

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can be used to determine the compensation payable to the person under this Part by reference to the maximum compensation that can be payable to a person under this Part.

(2) The guide must:

(a) specify different methods under paragraph (1)(e) for:

(i) service injuries or diseases that relate to warlike service or non-warlike service; and

(ii) other service injuries or diseases; and

(b) specify a method for determining the compensation payable to a person who has both:

(i) a service injury or disease that relates to warlike service or non-warlike service; and

(ii) another service injury or disease.

(3) The Commission may, from time to time, repeal or amend the guide in writing.

(4) The guide, and any repeal or amendment of the guide, is a legislative instrument.

(5) Despite subsection 14(2) of the *Legislation Act 2003*, the guide, or an amendment of the guide, may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

68 Entitlement to compensation for permanent impairment

(1) The Commonwealth is liable to pay compensation to a person if:

(a) the Commission has accepted liability for one or more service injuries or diseases (the ***compensable condition***) of the person; and

(b) the Commission is satisfied that:

(i) as a result of the compensable condition, the person has suffered an impairment; and

(ii) the impairment is likely to continue indefinitely; and

(iii) the person's compensable condition has stabilised; and

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(c) a claim for compensation in respect of the person has been made under section 319.

Note 1: The impairment must constitute a minimum number of impairment points for compensation to be payable (see sections 69 and 70). However, the impairment points from more than one service injury or disease can be combined to make up that minimum number.

Note 2: This subsection might also be affected by sections 73 (indefinite impairments) and 389 (choice to institute action for damages).

(2) The Commission must determine:

(a) the degree of impairment suffered by the person as a result of the compensable condition; and

(b) the date on which the person became entitled to compensation under this section.

(3) For the purposes of paragraph (2)(b), the date determined must be the later of:

(a) the date on which a claim was made under section 319 for acceptance of liability for the compensable condition; and

(b) the date on which both of the following were first satisfied, as estimated by a medical practitioner who has examined the person:

(i) the impairment suffered by the person as a result of the compensable condition became likely to continue indefinitely;

(ii) the person's compensable condition stabilised.

69 No compensation for less than the threshold impairment points

The Commonwealth is liable to pay compensation to a person under section 68 only if:

(a) for an impairment resulting from a single service injury or disease consisting of:

(i) hearing loss; or

(ii) the loss, or the loss of the use, of a finger or toe; or

(iii) the loss of the sense of taste or smell;

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the impairment suffered by the person constitutes at least 5 impairment points; and

(b) otherwise—the impairment suffered by the person from the compensable condition constitutes at least 10 impairment points.

Note: This section might be affected by section 70 (aggravations etc.).

70 Compensation for aggravations etc.

(1) The Commonwealth is liable to pay compensation under section 68 in respect of a single aggravated injury or disease only if:

(a) for an aggravation of, or a material contribution to:

(i) hearing loss; or

(ii) the loss, or the loss of the use, of a finger or toe; or

(iii) the loss of the sense of taste or smell;

the impairment suffered by the person as a result of the aggravation or material contribution constitutes at least 5 impairment points; and

(b) otherwise—the impairment suffered by the person as a result of the aggravation or material contribution constitutes at least 10 impairment points.

(2) The amount of compensation that the Commonwealth is liable to pay in respect of the person's aggravated injury or disease is the amount payable in respect of the impairment points of the person, and the effect on the person's lifestyle, from the aggravation or material contribution.

71 Additional compensation

Additional compensation for impairment from another service injury or disease

(1) The Commonwealth is liable to pay additional compensation to a person who has been paid, or is entitled to be paid, compensation under this Part (including interim compensation under section 75) if:

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(a) the Commission has accepted liability for one or more additional service injuries or diseases of the person (other than the original compensable condition in respect of which the person is entitled to be paid compensation); and

(b) the Commission is satisfied that:

(i) as a result of the additional injuries or diseases, the person suffers additional impairment; and

(ii) the additional impairment is likely to continue indefinitely; and

(iii) the increase in the person's overall impairment constitutes at least 5 impairment points; and

(iv) each of the person's additional injuries or diseases have stabilised; and

(c) a claim for compensation in respect of the person has been made under section 319.

Note 1: The impairment points from more than one service injury or disease can be combined to make up the 5 impairment points needed for compensation to be payable.

Note 2: This subsection might also be affected by sections 72 (aggravations), 73 (indefinite impairments) and 389 (choice to institute action for damages).

Additional compensation for deterioration of original condition

(2) The Commonwealth is liable to pay additional compensation to a person who has been paid, or is entitled to be paid, compensation under this Part (including interim compensation under section 75) for the compensable condition if:

(a) the Commission is satisfied that:

(i) the person has suffered additional impairment as a result of a deterioration in the person's compensable condition; and

(ii) the additional impairment is likely to continue indefinitely; and

(iii) the deterioration is directly related to the natural progression of the compensable condition; and

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(iv) the increase in the person's overall impairment constitutes at least 5 impairment points; and

(v) the person's compensable condition has stabilised; and

(b) a claim for compensation in respect of the person has been made under section 319.

Note 1: This subsection might be affected by sections 72 (aggravations etc.) and 73 (indefinite impairments).

Note 2: The Commission must be notified of the deterioration (see paragraph 77(3)(a)).

Determination of date

(3) The Commission must determine the date on which the person became entitled to compensation under this section.

(4) For the purposes of subsection (3), the date determined for additional compensation under subsection (1) must be the later of:

(a) the date on which a claim was made under section 319 for acceptance of liability for the additional service injuries or diseases; and

(b) the date on which both of the following were first satisfied, as estimated by a medical practitioner who has examined the person:

(i) the additional impairment suffered by the person as a result of the additional injuries or diseases became likely to continue indefinitely;

(ii) each of the person's additional injuries or diseases stabilised.

(5) For the purposes of subsection (3), the date determined for additional compensation under subsection (2) must be the later of:

(a) the date on which the Commission was notified of the deterioration in the person's compensable condition; and

(b) the date on which both of the following were first satisfied, as estimated by a medical practitioner who has examined the person:

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(i) the additional impairment suffered by the person as a result of the deterioration in the person's compensable condition became likely to continue indefinitely;

(ii) the person's compensable condition stabilised.

References to person who has been paid, or is entitled to be paid, compensation under this Part

(6) For the purposes of this section, a person is taken to have been paid, or be entitled to be paid, compensation under this Part if the Commission is taken to have accepted liability for an injury sustained, or a disease contracted, by the person because of the operation of section 24A.

72 Additional compensation for aggravations etc.

(1) The Commonwealth is liable to pay additional compensation under subsection 71(1) in respect of a single aggravated injury or disease only if the increase in the person's overall impairment resulting from the aggravation or material contribution constitutes at least 5 impairment points.

(2) The amount of additional compensation that the Commonwealth is liable to pay under subsection 71(1) in respect of the aggravated injury or disease of a person is the amount payable in respect of the impairment points of the person, and the effect on the person's lifestyle, from the aggravation or material contribution.

73 Deciding whether an impairment is likely to continue indefinitely

For the purposes of subparagraph 68(1)(b)(ii) and subparagraphs 71(1)(b)(ii) and (2)(a)(ii), in deciding whether an impairment suffered by a person is likely to continue indefinitely, the Commission must have regard to:

(a) the duration of the impairment; and

(b) the likelihood of improvement in the one or more service injuries or diseases concerned; and

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(c) whether the person has undertaken all reasonable rehabilitative treatment for the impairment; and

(d) any other relevant matters.

74 Amount of compensation

(1) The maximum weekly amount of compensation payable to a person under this Part (including additional compensation under section 71) is $233.07.

Note: The amount of $233.07 is indexed under section 404.

(2) The Commission must, as soon as practicable after the Commonwealth becomes liable to pay compensation under section 68 or 71 to a person for an impairment resulting from one or more service injuries or diseases:

(a) assess the effect of the injuries or diseases on the person's lifestyle; and

(b) determine the weekly amount of compensation to which the person is entitled under that section.

75 Interim compensation

(1) The Commonwealth is liable to pay interim compensation to a person if:

(a) the Commission is satisfied that the person will be entitled to compensation under section 68 or 71; and

(b) the Commission is not able to determine the degree of impairment suffered by the person because the one or more service injuries or diseases concerned have not stabilised; and

(c) the Commission is satisfied that the impairment suffered by the person as a result of the injuries or diseases constitutes at least the number of impairment points required for the person to become entitled to compensation under section 68 or 71; and

(d) a claim for compensation in respect of the person has been made under section 319.

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Note 1: The impairment points from more than one service injury or disease can be combined to make up the impairment points needed for compensation to be payable.

Note 2: Compensation is not payable under this section if the person chooses under section 389 to institute a common law action.

(2) The weekly amount of the interim compensation is the amount the Commission determines to be reasonable having regard to the Commission's estimate of the final degree of impairment that will be suffered by the person and after assessing the effect of the injuries or diseases on the person's lifestyle.

(3) The Commission must determine the date on which the impairment suffered by the person constituted at least the number of impairment points required for the person to become entitled to compensation under section 68 or 71.

(4) The Commission must, when the Commission becomes satisfied that the one or more injuries or diseases concerned have all stabilised:

(a) determine the degree of impairment suffered by the person; and

(b) assess the effect of the injuries or diseases on the person's lifestyle; and

(c) determine the weekly amount of compensation to which the person is entitled.

(5) If the weekly amount determined under subsection (4) is more than the weekly amount determined under subsection (2), the person is entitled to an additional weekly amount equal to the difference between those amounts.

76 Notifying the claimant

(1) If the Commission determines, under section 74, the weekly amount of compensation that is payable to a person under section 68 or 71, or determines the weekly amount of interim compensation payable to a person under subsection 75(2), the Commission must give the person a written notice:

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(a) specifying that weekly amount; and
(b) specifying what percentage that weekly amount is of the maximum weekly amount of compensation that could be payable to a person under this Part; and
(c) advising the person that the person can choose, under section 78, to convert some or all of the weekly amount to a lump sum in accordance with that section.

Note 1: Section 74 sets the maximum weekly amount of compensation that could be payable to a person under this Part. That amount is indexed under section 404.

Note 2: If the Commission determines that no compensation is payable under this Part, the Commission is required to notify the person of that determination (see section 346).

(2) If the Commission determines under subsection 75(4) a weekly amount of compensation payable to a person that is more than the weekly amount determined for the person under subsection 75(2), the Commission must give the person a written notice:
(a) specifying the difference between those weekly amounts; and
(b) advising the person that the person can choose, under section 78, to receive a lump sum instead of the difference between those weekly amounts (whether or not the person has made a choice under that section in respect of the amount determined for the person under subsection 75(2)).

Note: The amount of the lump sum is worked out under subsection 78(5).

(3) The notice must specify the date on which it is given.

(4) The notice may be included in the notice given under section 346.

77 When weekly compensation becomes payable

(1) Weekly compensation payable to a person under section 68, to the extent the compensation is in respect of a service injury or disease, is payable from:
(a) if the date on which the person became entitled to compensation under that section in respect of the injury or

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disease is the date mentioned in paragraph 68(3)(a)—that date; or

(b) if the date on which the person became entitled to compensation under that section in respect of the injury or disease is the date mentioned in paragraph 68(3)(b)—the first day of the calendar month during which that date occurs.

(2) Additional weekly compensation payable to a person under subsection 71(1), to the extent that the compensation is in respect of a service injury or disease, is payable from:

(a) if the date on which the person became entitled to compensation under that subsection in respect of the injury or disease is the date mentioned in paragraph 71(4)(a)—that date; or

(b) if the date on which the person became entitled to compensation under that subsection in respect of the injury or disease is the date mentioned in paragraph 71(4)(b)—the first day of the calendar month during which that date occurs.

(3) Additional weekly compensation payable to a person under subsection 71(2), to the extent the compensation is in respect of a deterioration in a service injury or disease, is payable from:

(a) if the date on which the person became entitled to compensation under that subsection in respect of the deterioration in the injury or disease is the date mentioned in paragraph 71(5)(a)—that date; or

(b) if the date on which the person became entitled to compensation under that subsection in respect of the deterioration in the injury or disease is the date mentioned in paragraph 71(5)(b)—the first day of the calendar month during which that date occurs.

(4) Interim weekly compensation payable to a person under section 75, to the extent the compensation is in respect of a service injury or disease, is payable from the later of:

(a) the date on which a claim was made under section 319 for acceptance of liability for the injury or disease; and

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(b) the date determined by the Commission under subsection 75(3).

(5) An additional weekly amount to which a person is entitled under subsection 75(5) is payable from the date on which the Commission becomes satisfied that all of the person's service injuries or diseases have stabilised.

78 Choice to take lump sum

(1) A person who receives a notice under section 76 about a weekly amount payable to the person under section 68 or 71 or subsection 75(2) (the ***convertible amount***) may choose:

(a) to convert 100% of the convertible amount to a lump sum; or

(b) if the convertible amount is at least 10%, but not more than 20%, of the maximum weekly amount of compensation that could be payable to a person under this Part—to convert 50% of the convertible amount to a lump sum; or

(c) if the convertible amount is more than 20% of the maximum weekly amount of compensation that could be payable to a person under this Part—to convert 25%, 50% or 75% of the convertible amount to a lump sum.

Note: Section 74 sets the maximum weekly amount of compensation that could be payable to a person under this Part. That amount is indexed under section 404.

(2) A person who makes the choice cannot change it.

(3) The choice must be made in writing and must be given to the Commission within 6 months after the date on which the person received the notice.

(4) The Commission may, either before or after the end of that period, extend the period within which the choice must be made if it considers there are special circumstances for doing so.

(5) The amount of the lump sum is worked out using the following formula:

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$$\text{Weekly amount converted to a lump sum} = \text{Appropriate percentage of the weekly amounts paid to the person on or after the notice date and before the Commission became aware of the choice}$$

where:

appropriate percentage means the percentage chosen by the person under subsection (1).

notice date means the date specified in the notice given to the person under section 76.

weekly amount converted to a lump sum means the appropriate percentage of the weekly amount payable to the person, as at the date of the notice given to the person under section 76, converted to a lump sum in accordance with advice from the Australian Government Actuary by reference to the person's age at that date.

Note: Arrears of compensation are payable for the period between the date when compensation became payable and the notice date. These are not subtracted from the weekly amount converted to a lump sum.

(6) However, a lump sum that can be payable to a person must not exceed that worked out by reference to the conversion to a lump sum of a periodic payment payable to a male aged 30.

Choice may be made by legal personal representative

(7) The legal personal representative of a deceased person may choose to convert 100% of the weekly amount of compensation that would have been payable to the deceased person but for the person's death to a lump sum if:

(a) the deceased person made the claim for compensation before the person's death; and

(b) the deceased person did not make a choice under subsection (1) in respect of the weekly amount before the person's death.

Note: A claim made before the death of the person who made the claim continues to have effect after the death of that person (see subsection 321(1)).

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(8) The choice under subsection (7) must be made in writing and must be given to the Commission within 6 months after the date on which the legal personal representative is given the notice under section 76.

(9) For the purposes of working out the amount of the lump sum if a choice is made under subsection (7), subsection (5) applies as if:
  (a) the appropriate percentage were 100%; and
  (b) the weekly amount converted to a lump sum were worked out by reference to the person's age at the date of the person's death; and
  (c) the weekly amount converted to a lump sum excluded any compensation payable in respect of the effect of a service injury or disease on a person's lifestyle.

79 When lump sum is payable

(1) The lump sum is payable to the person within 30 days after the date on which the Commission became aware of the choice under subsection 78(1).

(2) The Commonwealth is liable to pay interest to the person on the amount of the lump sum if the lump sum is not paid to the person before the end of that period. The interest is payable in respect of the period starting at the end of that period of 30 days and ending on the day on which the lump sum is paid.

(3) The interest is payable at the rate from time to time determined by the Minister by legislative instrument.

(4) This section applies in relation to a legal personal representative who makes a choice under subsection 78(7) in the same way as it applies in relation to a person who makes a choice under subsection 78(1).

80 Additional amounts payable if maximum compensation paid

(1) This section applies to a person (the ***impaired person***) if:
  (a) either or both of the following apply:

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(i) the Commission has accepted liability for one or more injuries or diseases of the person (other than because of the operation of section 24A of this Act);

(ii) the person is covered by subsection (1A) of this section; and

(b) the Commission has determined that the degree of impairment suffered by the person as a result of one or more service injuries or diseases constitutes at least 80 impairment points.

(1A) A person is covered by this subsection if:

(a) the Commission is taken to have accepted liability for an injury sustained, or a disease contracted, by the person (the ***original condition***) because of the operation of section 24A; and

(b) the Commission is satisfied that:

(i) the person has suffered additional impairment as result of another injury or disease or as a result of a deterioration in the original condition; and

(ii) the increase in the person's overall impairment constitutes at least 5 impairment points.

(2) The Commonwealth is liable to pay $60,000 for each person who is both a dependant of the impaired person and an eligible young person at the later of:

(a) the date determined by the Commission to be the date on which the impairment suffered by the impaired person constitutes at least 80 impairment points; or

(b) the latest of whichever of the following is applicable:

(i) if the person has a single service injury or disease—the date on which a claim was made under section 319 for acceptance of liability for the injury or disease;

(ii) if the person has more than one service injury or disease—the date on which the most recent claim was made under section 319 for acceptance of liability for one of the service injuries or diseases concerned;

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(iii) if the person is covered by subsection (1A) of this section—the date determined by the Commission to be the date on which the increase in the person's overall impairment constitutes at least 5 impairment points.

Note: The amount of $60,000 is indexed under section 404.

(3) The amount specified in subsection (2) is also payable in respect of a child of the impaired person:

(a) who was born alive on or after the later of those times but who was conceived before that time; or

(b) who was adopted on or after the later of those times but in respect of whom adoption proceedings were begun before that time.

(4) The Commonwealth is only liable to pay the amount specified in subsection (2) once for each eligible young person or child of the impaired person.

80A Whom the additional amount is payable to

(1) An additional amount under section 80 in respect of an eligible young person or child of the impaired person is payable to the person or persons determined by the Commission in accordance with an instrument made under subsection (3) of this section.

(2) If the additional amount in respect of an eligible young person or child is payable to more than one person, a proportion of the additional amount determined by the Commission in accordance with an instrument made under subsection (3) is payable to each of the persons.

Note: The sum of the amounts paid to each of the persons cannot exceed the amount that the Commonwealth is liable to pay under section 80 in respect of the eligible young person or child.

(3) The Commission may, by legislative instrument, specify criteria or other requirements for determining:

(a) the person or persons to whom an additional amount in respect of an eligible young person or child is payable; and

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(b) if the additional amount is payable to more than one person—the proportion of the additional amount that is payable to each of the persons.

(4) Without limiting subsection (3), the criteria or other requirements specified may relate to the circumstances surrounding legal responsibility or other arrangements for the care of the eligible young person or child.

81 Compensation for cost of financial advice and legal advice

Financial advice

(1) The Commonwealth is liable to pay compensation for the cost of financial advice obtained by a person if:

(a) the Commonwealth is liable to pay compensation to the person under section 68, 71 or 75; and

(b) the Commission determines that the impairment suffered by the person as a result of one or more service injuries or diseases constitutes at least 50 impairment points; and

(c) the financial advice was obtained from a suitably qualified financial adviser after the Commission had made the determination; and

(ca) the financial advice was obtained in respect of the choice the person may make under subsection 78(1); and

(d) a claim for compensation in respect of the person has been made under section 319.

Legal advice

(2) The Commonwealth is liable to pay compensation for the cost of legal advice obtained by a person if:

(a) the Commonwealth is liable to pay compensation to the person under section 68, 71 or 75; and

(b) the Commission determines that the impairment suffered by the person as a result of one or more service injuries or diseases constitutes at least 50 impairment points; and

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(c) the legal advice was obtained from a practising lawyer after the Commission had made the determination; and
(d) the legal advice was obtained in respect of the choice the person may make under subsection 78(1); and
(e) a claim for compensation in respect of the person has been made under section 319.

82 Amount of financial advice and legal advice compensation

Financial advice

(1) The Commission must determine an amount of compensation under subsection 81(1) for the cost of the financial advice that it considers reasonable.

Legal advice

(2) The Commission must determine an amount of compensation under subsection 81(2) for the cost of the legal advice that it considers reasonable.

Limit

(3) The sum of the total amount of compensation under subsections 81(1) and (2) in respect of the person must not exceed $2,400.

Note: The amount of $2,400 is indexed under section 404.

(4) The amount of $2,400 applies both to financial advice and legal advice under this Part for the person and financial advice and legal advice under Part 6 (Special Rate Disability Pension) for the person if the date specified in the first notice given to the person under section 76, and the date on which the offer under Part 6 was made, are the same.

83 Whom the compensation is payable to

(1) Compensation under section 81 for the cost of financial advice or legal advice is payable to:

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(a) the person who made the claim for compensation; or
(b) if that person so directs:
(i) the person who gave the advice; or
(ii) any other person who incurred the cost of the advice.

Note: A special rule applies if there is a trustee under section 432.

(2) An amount paid to the person who gave the advice discharges any liability of any other person for the cost of the advice to the extent of the payment.

83A Energy supplement for compensation under this Part

(1) The Commonwealth is liable to pay an energy supplement to a person for a day if:
(a) the condition in subsection (2) is met for the day; and
(b) the person is residing in Australia on the day; and
(c) on the day the person either:
(i) is in Australia; or
(ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

Note: Section 424L may affect the person's entitlement to the energy supplement.

Condition—receipt of compensation under this Part

(2) The condition is that either or both of the following apply:
(a) weekly compensation under this Part (except this section):
(i) is payable to the person for the day; or
(ii) would be payable to the person for the day apart from paragraph 398(3)(b) (of this Act) and offsetting described in subsection 13(4) of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*;
(b) before the day the person received lump sum compensation under this Part.

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Rate of energy supplement

(3) The daily rate of the supplement is 1/7 of $3.80.

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Part 3—Compensation for incapacity for service or work for members

Division 1—Entitlement to compensation

84 Simplified outline of this Part

This Part provides for compensation to be provided for current members who are incapacitated for service as a result of a service injury or disease. The Part also provides for compensation for some current part-time Reservists, cadets and declared members who are incapacitated for work as a result of a service injury or disease.

The Commission must have accepted liability for the injury or disease, and a claim must have been made in respect of the member, to be entitled to the compensation.

The amount of compensation a member receives for a week depends on the difference between the member's normal and actual earnings for the week. The member's normal earnings are a notional amount. The member's actual earnings are based on how much the member actually earns for the week.

Normal earnings are worked out under Divisions 2 to 6, depending on the member's current status (for example, as a Permanent Forces member or a Reservist) and their status at the time the service injury or disease occurred.

Division 7 deals with how to work out the amount of compensation a member receives for a week if the member receives or has received a benefit under a Commonwealth superannuation scheme. (However, the amount of compensation the member receives for a week might be worked out under Divisions 2 to 6 if the member

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has applied for the benefit, but has not begun to receive or has not received the benefit (see section 89B).)

Part 5 of this Chapter contains other important rules that apply in working out normal earnings, actual earnings and the amount of compensation generally.

85 Compensation for incapacitated full-time members

(1) The Commonwealth is liable to pay compensation to a person for a week if:

(a) the person is a Permanent Forces member or a continuous full-time Reservist for the week; and

(b) the Commission has accepted liability for a service injury or disease of the person; and

(c) the service injury or disease results in the person's incapacity for service for the week; and

(d) a claim for compensation in respect of the person has been made under section 319.

Note 1: This section might be affected by the following provisions:

(a) sections 50, 52 and 329 (failure to undergo examination or rehabilitation program);

(b) section 88 (aggravations etc.);

(c) section 196 (compensation for part weeks).

Note 2: The Commission is taken to have accepted liability for an injury or disease in certain circumstances (see section 24A).

(2) The amount of compensation that the Commonwealth is liable to pay is worked out under section 89 or 89A.

Note: The Commonwealth is not liable to pay compensation if the amount of compensation is nil or a negative amount.

86 Compensation for incapacitated part-time Reservists

(1) The Commonwealth is liable to pay compensation to a person for a week if:

(a) the person is a part-time Reservist for the week; and

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(b) the Commission has accepted liability for a service injury or disease of the person; and

(c) either or both of the following applies:

(i) the service injury or disease results in the person's incapacity for service for the week;

(ii) the service injury or disease results in the person's incapacity for work for the week; and

(d) the Chief of the Defence Force has not advised the Commission under section 10 that the person is unlikely to be able to perform the duties of a part-time Reservist in the future; and

(e) a claim for compensation in respect of the person has been made under section 319.

Note 1: This section might be affected by the following provisions:

(a) sections 50, 52 and 329 (failure to undergo examination or rehabilitation program);

(b) section 88 (aggravations etc.);

(c) section 196 (compensation for part weeks).

Note 1A: The Commission is taken to have accepted liability for an injury or disease in certain circumstances (see section 24A).

Note 2: If the Chief of the Defence Force has advised the Commission under section 10 that a person is unlikely to be able to perform the duties of a part-time Reservist in the future, the person might be entitled to compensation under Part 4.

(2) The amount of compensation that the Commonwealth is liable to pay is worked out under section 89 or 89A.

Note: The Commonwealth is not liable to pay compensation if the amount of compensation is nil or a negative amount.

87 Compensation for incapacitated cadets and declared members

(1) The Commonwealth is liable to pay compensation to a person for a week if:

(a) the person is a cadet or a declared member for the week; and

(b) the Commission has accepted liability for a service injury or disease of the person; and

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(c) the service injury or disease results in the person's incapacity for work for the week; and

(d) if the person is a cadet—the commanding officer of the cadet's unit has not advised the Commission under section 10 that the person is unlikely to be able to perform the duties of a cadet in the future; and

(e) a claim for compensation in respect of the person has been made under section 319.

Note 1: This section might be affected by the following provisions:
(a) sections 50, 52 and 329 (failure to undergo examination or rehabilitation program);
(b) section 88 (aggravations etc.);
(c) section 196 (compensation for part weeks).

Note 2: A person whose commanding officer has advised the Commission under section 10 that the person is unlikely to be able to perform the duties of a cadet in the future might be entitled to compensation under Part 4.

(2) The amount of compensation that the Commonwealth is liable to pay is worked out under section 89 or 89A.

Note: The Commonwealth is not liable to pay compensation if the amount of compensation is nil or a negative amount.

Note 1A: The Commission is taken to have accepted liability for an injury or disease in certain circumstances (see section 24A).

88 No compensation in certain cases relating to aggravations etc. of injuries or diseases

The Commonwealth is only liable to pay compensation under section 85, 86 or 87 in respect of an aggravated injury or disease if it is because of the aggravation or material contribution (whether wholly or partly) that the service injury or disease results in the person's incapacity for service or work for the week.

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89 Amount of compensation for current members

(1) The amount of compensation that the Commonwealth is liable, under section 85, 86, or 87, to pay to a member for a week is worked out using the following formula:

$$\text{Member's normal earnings for the week} \_ \text{Member's actual earnings for the week}$$

Note: See subsection (4) for an exception.

(2) However, if an amount of compensation worked out using the formula is nil or a negative amount, then the Commonwealth is not liable to pay the compensation for the week.

(3) Use this table to work out a member's ***actual earnings*** and ***normal earnings***:

Definitions of *actual earnings* and *normal earnings*

Item	For this type of member	***actual earnings* has the meaning given by...**	***normal earnings* has the meaning given by...**
1	A Permanent Forces member	section 92	subsection 91(1)
2	A continuous full-time Reservist	section 92	subsection 91(1)
3	A part-time Reservist to whom Division 3 applies	section 101	subsection 95(1)
4	A part-time Reservist to whom Division 4 applies	section 105	subsection 104(1)
5	A part-time Reservist to whom Division 5 applies	section 115	subsection 108(1)
6	A cadet or a declared member	the regulations (see Division 6)	the regulations (see Division 6)

Note 1: If a member's normal earnings are less than the relevant minimum wage set by a national minimum wage order, then the member's normal earnings are instead the relevant minimum wage (see section 179).

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Note 2: Certain amounts (such as bonuses) are excluded from the calculation of normal and actual earnings under section 180.

(4) Subsection (1) does not apply if section 89A applies.

89A Amount of compensation for persons receiving a Commonwealth superannuation benefit

The amount of compensation that the Commonwealth is liable, under section 85, 86 or 87, to pay for a week to a person who receives either or both a pension or lump sum under a Commonwealth superannuation scheme is worked out in accordance with the following sections:

(a) if the person is receiving only a pension—section 116B;

(b) if the person has received only a lump sum—section 116C;

(c) if the person is receiving a pension and has received a lump sum—section 116D.

Note: The Commission may determine that this section does not apply if a person has applied for a benefit under a Commonwealth superannuation scheme, but has not begun to receive or has not received the benefit (see section 89B).

89B Payments before a person receives a Commonwealth superannuation benefit

(1) The Commission may, in writing, determine that section 89A does not apply to a person if:

(a) the person has applied for a benefit under a Commonwealth superannuation scheme on the basis of the person's incapacity for service or work, and the application has not been withdrawn; and

(b) the person has not begun to receive or has not received the benefit (as the case requires); and

(c) the person has been notified, in writing:

(i) of the effect of section 89A and this section; and

(ii) that the person may be overpaid while section 89A does not apply to the person; and

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(iii) that the overpayments may be recovered under Part 3 of Chapter 11; and

(d) the person has agreed, in writing:

(i) for section 89A not to apply; and

(ii) to notify the Commission if the person withdraws the application for the benefit; and

(iii) to notify the Commission if the person begins to receive or receives the benefit.

(2) The determination has effect according to its terms.

Revocation of determination

(3) The Commission may, in writing, revoke the determination if the Commission is satisfied that:

(a) the person has withdrawn the application for the benefit; or

(b) the person has begun to receive or has received the benefit; or

(c) the person has not complied with a requirement to provide information, or take any further action, in relation to the application for the benefit.

(4) After a determination is revoked in relation to a person who has begun to receive or has received a benefit under a Commonwealth superannuation scheme, section 89A is taken always to have applied to the person.

Status of instruments

(5) A determination under subsection (1), or a revocation under subsection (3), is not a legislative instrument.

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Division 2—Working out normal and actual earnings for full-time members

90 Simplified outline of this Division

This Division tells you how to work out the normal and actual earnings for a Permanent Forces member or a continuous full-time Reservist who is incapacitated for service.

The normal earnings are based on how much the member would have earned for the week if the member were not incapacitated. Normal earnings worked out under this Division might be adjusted under Part 5.

Section 92 tells you how to work out actual earnings.

91 Working out normal earnings

(1) The ***normal earnings*** for a week for a Permanent Forces member, or a continuous full-time Reservist, who is incapacitated for service means the amount worked out using the following formula:

$$\text{Member's normal ADF pay for the week} + \text{Member's normal pay-related allowances for the week}$$

(2) The member's ***normal ADF pay*** for a week means the amount of pay that the member would have earned for the week as a member of the Defence Force if the member were not incapacitated for service.

Note: The member's normal ADF pay might be adjusted under Part 5.

(3) The member's ***normal pay-related allowances*** for a week means the total amount of compensable pay-related allowances that would have been paid to the member for the week if the member were not incapacitated for service.

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Note: The member's normal pay-related allowances might be adjusted under Part 5.

(4) The Chief of the Defence Force must advise the Commission in writing of the date on which each compensable pay-related allowance would normally have ceased to be paid to the member if the member were not incapacitated for service.

(5) In this section:

compensable pay-related allowance for a member means a pay-related allowance:

(a) that was being paid to the member immediately before the onset date for the member's incapacity for service; or

(b) that would be paid to the member because the member is promoted, as mentioned in paragraph 186(2)(b); or

(c) that the member would have been paid after completing his or her initial training, as mentioned in section 189.

92 Working out actual earnings

(1) The ***actual earnings*** for a week for a Permanent Forces member, or a continuous full-time Reservist, who is incapacitated for service means the amount worked out using the following formula:

$$\text{Member's actual ADF pay for the week} + \text{Member's actual pay-related allowances for the week}$$

(2) The member's ***actual ADF pay*** for a week means the amount of pay that the member earns for the week as a member of the Defence Force.

(3) The member's ***actual pay-related allowances*** for a week means the total amount of compensable pay-related allowances (as defined in subsection 91(5)) that are paid to the member for the week.

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Division 3—Working out normal and actual earnings for part-time Reservists

Subdivision A—Simplified outline of this Division

93 Simplified outline of this Division

This Division tells you how to work out the normal and actual earnings for a person who is currently a part-time Reservist and who was a part-time Reservist when the service injury or disease occurred. (For example, this Division would apply to a person who has always been a part-time Reservist.)

The Reservist's normal earnings are made up of an ADF component and a civilian component. For a Reservist who is incapacitated for both service and work:

(a) the ADF component is based on how much the Reservist would have earned as a part-time Reservist if the Reservist were not incapacitated for service; and

(b) the civilian component is based on how much the Reservist earned from civilian work during an example period taken from before the onset of the incapacity for work.

Normal earnings worked out under this Division might be adjusted under Part 5.

Subdivision E tells you how to work out actual earnings.

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Subdivision B—Working out normal earnings for part-time Reservists

94 Application of this Division to part-time Reservists

This Division applies to a person in respect of a week if:

(a) the person is a part-time Reservist for the week; and

(b) the person is incapacitated for either or both service or work for the week as a result of a service injury or disease; and

(c) the person was also a part-time Reservist when the service injury was sustained or the service disease was contracted.

The person is called an ***incapacitated Reservist*** in this Division.

95 Working out normal earnings

(1) The ***normal earnings*** for an incapacitated Reservist for a week is the amount worked out using the following formula:

$$\text{Reservist's ADF component for the week} + \text{Reservist's civilian component for the week}$$

(2) In this section:

ADF component for a week:

(a) for an incapacitated Reservist who is incapacitated for service—means the amount worked out under section 96; and

(b) for an incapacitated Reservist who is not incapacitated for service—means the amount worked out under section 97.

civilian component for a week:

(a) for an incapacitated Reservist who is incapacitated for work—means the amount worked out under section 98; and

(b) for an incapacitated Reservist who is not incapacitated for work—means the amount worked out under section 100.

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Subdivision C—Working out the ADF component of normal earnings

96 Working out the ADF component for an incapacitated Reservist who is incapacitated for service

(1) The ***ADF component*** for a week for an incapacitated Reservist who is incapacitated for service is the amount worked out using the following formula:

$$\left(\begin{array}{c}\text{Reservist's}\\ \text{reserve days}\\ \text{for the week}\end{array} \times \begin{array}{c}\text{Reservist's}\\ \text{rate of pay}\\ \text{for a day}\end{array}\right) + \left(\begin{array}{c}\text{Reservist's}\\ \text{pay-related}\\ \text{allowance days}\\ \text{for the week}\end{array} \times \begin{array}{c}\text{Reservist's}\\ \text{amount of}\\ \text{pay-related}\\ \text{allowances}\\ \text{for a day}\end{array}\right)$$

Note: The expressions used in this formula are defined in subsection (3).

(2) The Chief of the Defence Force must advise the Commission in writing of:

(a) the date on which each compensable pay-related allowance would normally have ceased to be paid to the Reservist; and

(b) the number of days (if any) in each week that the Reservist would have been paid as a Reservist; and

(c) the number of days (if any) in each week that the Reservist would have been paid an amount of pay-related allowances;

if the Reservist were not incapacitated for service.

(3) In this section:

amount of pay-related allowances for an incapacitated Reservist for a day means the total amount of compensable pay-related allowances that would have been paid to the Reservist as a part-time Reservist for the day if the Reservist were not incapacitated for service.

Note: The Reservist's pay-related allowances might be adjusted under Part 5.

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compensable pay-related allowance means a pay-related allowance:

(a) that was being paid to an incapacitated Reservist immediately before the onset date for the Reservist's incapacity for service; or

(b) that would be paid to an incapacitated Reservist because the Reservist is promoted, as mentioned in paragraph 186(2)(b); or

(c) that an incapacitated Reservist would have been paid after the Reservist completed his or her initial training, as mentioned in section 189.

pay-related allowance days for an incapacitated Reservist for a week means the number of days advised by the Chief of the Defence Force under paragraph (2)(c).

rate of pay for an incapacitated Reservist for a day means the amount of pay that the Reservist would have earned for the day as a part-time Reservist if the Reservist were not incapacitated for service.

Note: The Reservist's rate of pay might be adjusted under Part 5.

reserve days for an incapacitated Reservist for a week means the number of days advised by the Chief of the Defence Force under paragraph (2)(b).

97 Working out the ADF component for an incapacitated Reservist who is not incapacitated for service

(1) The ***ADF component*** for a week for an incapacitated Reservist who is not incapacitated for service means the amount worked out using the following formula:

$$\text{Amount of pay the Reservist earns for the week as a part-time Reservist} + \text{Total amount of compensable pay-related allowances that are paid to the Reservist for the week}$$

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Note: An incapacitated Reservist might only be incapacitated for work and not incapacitated for service (see paragraph 86(1)(c)).

(2) In this section:

compensable pay-related allowance has the same meaning as in subsection 96(3).

Subdivision D—Working out the civilian component of normal earnings

98 Working out the civilian component for an incapacitated Reservist who is incapacitated for work

Working out the civilian component of normal earnings

(1) The ***civilian component*** for a week for an incapacitated Reservist who is incapacitated for work is the amount worked out using the following formula:

$$\text{Average number of days per week (if any) during the example period for which the Reservist was paid civilian daily earnings} \times \text{Reservist's civilian daily earnings}$$

Note: The civilian component for an incapacitated Reservist who is not incapacitated for work is worked out under section 100.

Civilian daily earnings for those working before the onset of the incapacity

(2) The following formula sets out how to work out the ***civilian daily earnings*** for an incapacitated Reservist who was engaged in civilian work before the onset date for the incapacity:

$$\left(\text{Reservist's civilian daily hours} \times \text{Reservist's civilian rate of pay} \right) + \text{Reservist's allowances for a day}$$

Note 1: The expressions used in this formula are defined in subsection (5).

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Note 2: The Reservist's civilian daily earnings might be adjusted under Part 5.

(3) If the incapacitated Reservist was required to work overtime on a regular basis in that work, the ***civilian daily earnings*** also include the amount worked out using the following formula:

$$\text{Reservist's civilian overtime hours} \times \text{Reservist's civilian overtime rate of pay}$$

Note: The expressions used in this formula are defined in subsection (5).

Civilian daily earnings for those not working

(4) The ***civilian daily earnings*** for an incapacitated Reservist who was not engaged in civilian work before the onset date for the incapacity is nil.

Definitions

(5) In this section:

allowances for an incapacitated Reservist for a day means the average amount of allowances (other than expense allowances) paid to the Reservist for a day for his or her civilian work during the example period.

civilian daily hours for an incapacitated Reservist means the average number of hours worked each day by the Reservist in his or her civilian work during the example period.

civilian overtime hours for an incapacitated Reservist means the average number of hours of overtime worked each day by the Reservist in his or her civilian work during the example period.

civilian overtime rate of pay for an incapacitated Reservist means the average hourly overtime rate of pay for the Reservist's overtime in civilian work during the example period.

civilian rate of pay for an incapacitated Reservist means the average hourly ordinary time rate of pay for the Reservist's civilian work during the example period.

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example period has the meaning given by section 99.

99 Definition of *example period* for the civilian component of normal earnings

(1) For the purposes of section 98, the ***example period*** for an incapacitated Reservist who is incapacitated for work is the latest period of 2 weeks:

(a) during which the Reservist was continuously engaged in civilian work; and

(b) ending before the onset date for the incapacity.

(2) However, the Commission may determine as the ***example period***:

(a) a different 2 week period that it considers reasonable; or

(b) a period of a different length that it considers reasonable;

if the civilian daily earnings for the example period under subsection (1) would not fairly represent the daily rate at which the Reservist was being paid for his or her civilian work before the onset date for the incapacity.

100 Working out the civilian component for an incapacitated Reservist who is not incapacitated for work

The ***civilian component*** for a week for an incapacitated Reservist who is not incapacitated for work is the amount the Reservist earns (including from allowances other than expense allowances) for the week from civilian work that he or she undertakes for the week.

Note: An incapacitated Reservist might only be incapacitated for service and not incapacitated for work (see paragraph 86(1)(c)).

Subdivision E—Working out actual earnings

101 Working out actual earnings

(1) The ***actual earnings*** for a week for an incapacitated Reservist means the amount worked out using the following formula:

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Reservist's actual ADF pay for the week	+	Reservist's actual pay-related allowances for the week	+	Reservist's actual civilian earnings

(2) The Reservist's ***actual ADF pay*** for a week means the amount of pay that the Reservist earns for the week as a part-time Reservist.

(3) The Reservist's ***actual pay-related allowances*** for a week means the total amount of compensable pay-related allowances (as defined in subsection 96(3)) that are paid to the Reservist for the week.

(4) The Reservist's ***actual civilian earnings*** means the greater of the following amounts:

(a) the weekly amount (if any) that the Reservist is able to earn in suitable work;

(b) the amount the Reservist earns (including from allowances other than expense allowances) for the week from civilian work that he or she undertakes for the week.

Note: Section 181 sets out some matters the Commission must have regard to in determining how much the person is able to earn under paragraph (4)(a).

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Division 4—Working out normal and actual earnings for part-time Reservists who were previously Permanent Forces members

102 Simplified outline of this Division

This Division tells you how to work out the normal and actual earnings for a person:

(a) who is currently a part-time Reservist; and

(b) who was a Permanent Forces member or a continuous full-time Reservist when the service injury or disease occurred; and

(c) whose last period of full-time service was as a Permanent Forces member.

The normal earnings are based on the amount the person would have earned if the person were still a Permanent Forces member.

Normal earnings worked out under this Division might be adjusted under Part 5.

Section 105 tells you how to work out actual earnings.

103 Application of this Division to part-time Reservists who were previously Permanent Forces members

This Division applies to a person in respect of a week if:

(a) the person is a part-time Reservist for the week; and

(b) the person is incapacitated for either or both service or work for the week as a result of a service injury or disease; and

(c) the person was a Permanent Forces member, or a continuous full-time Reservist, when the service injury was sustained or the service disease contracted; and

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(d) the person was a Permanent Forces member immediately before completing his or her last period of full-time service.

The person is called an ***incapacitated Reservist*** in this Division.

104 Working out normal earnings

(1) The ***normal earnings*** for a week for an incapacitated Reservist means the amount worked out using the following formula:

$$\text{Reservist's full-time ADF pay for the week} + \text{Reservist's allowance component for the week} + \$100$$

Note: The amount of $100 is indexed under section 183.

(2) The Reservist's ***full-time ADF pay*** for a week means the amount of pay that the Reservist would have earned for the week as a Permanent Forces member if:

(a) the Reservist were still a Permanent Forces member; and

(b) the Reservist were not incapacitated for service.

Note: The Reservist's full-time ADF pay might be adjusted under Part 5.

(3) The Reservist's ***allowance component*** for a week means the total amount of compensable pay-related allowances that would have been paid to the Reservist for the week if:

(a) the Reservist were still a Permanent Forces member; and

(b) the Reservist were not incapacitated for service.

Note: The Reservist's allowance component might be adjusted under Part 5.

(4) The Chief of the Defence Force must advise the Commission in writing of the date on which each compensable pay-related allowance would normally have ceased to be paid to the Reservist if:

(a) the Reservist were still a Permanent Forces member; and

(b) the Reservist were not incapacitated for service.

(5) In this section:

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compensable pay-related allowance for an incapacitated Reservist means a pay-related allowance:

(a) that was being paid to the Reservist immediately before completing his or her last period of full-time service; or

(b) that the Reservist would have been paid after completing his or her initial training, as mentioned in section 189.

105 Working out actual earnings

(1) The ***actual earnings*** for a week for an incapacitated Reservist means the amount worked out using the following formula:

$$\text{Reservist's actual ADF pay for the week} + \text{Reservist's actual pay-related allowances for the week} + \text{Reservist's actual civilian earnings}$$

(2) The Reservist's ***actual ADF pay*** for a week means the amount of pay that the Reservist earns for the week as a part-time Reservist.

(3) The Reservist's ***actual pay-related allowances*** for a week means the total amount of compensable pay-related allowances (as defined in subsection 104(5)) that are paid to the Reservist for the week.

(4) The Reservist's ***actual civilian earnings*** means the greater of the following amounts:

(a) the weekly amount (if any) that the Reservist is able to earn in suitable work;

(b) the amount the Reservist earns (including from allowances other than expense allowances) for the week from civilian work that he or she undertakes for the week.

Note: Section 181 sets out some matters the Commission must have regard to in determining how much the person is able to earn under paragraph (4)(a).

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Division 5—Working out normal and actual earnings for part-time Reservists who were previously continuous full-time Reservists

Subdivision A—Simplified outline of this Division

106 Simplified outline of this Division

This Division tells you how to work out the normal and actual earnings for a person:

(a) who is currently a part-time Reservist; and

(b) who was a Permanent Forces member or a continuous full-time Reservist when the service injury or disease occurred; and

(c) whose last period of full-time service was as a continuous full-time Reservist.

The Reservist has a one-off choice between 2 ways of working out normal earnings. Normal earnings can be based on the amount the person would have earned if the person were still a continuous full-time Reservist. (This amount is called the full-time ADF earnings.) Alternatively, normal earnings can be based on the Reservist's earnings from other work engaged in before beginning his or her last period of continuous full-time service. (This amount is called the pre-CFTS earnings.)

Normal earnings worked out under this Division might be adjusted under Part 5.

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Subdivision B—Working out normal earnings for part-time Reservists who were previously continuous full-time Reservists

107 Application of this Division to part-time Reservists who were previously continuous full-time Reservists

This Division applies to a person in respect of a week if:

(a) the person is a part-time Reservist for the week; and

(b) the person is incapacitated for either or both service or work for the week as a result of a service injury or disease; and

(c) the person was a Permanent Forces member, or a continuous full-time Reservist, when the service injury was sustained or the service disease was contracted; and

(d) the person was a continuous full-time Reservist immediately before completing his or her last period of full-time service.

The person is called an ***incapacitated Reservist*** in this Division.

108 Working out normal earnings

(1) The ***normal earnings*** for the week for an incapacitated Reservist means whichever of the following amounts is chosen by the Reservist:

(a) the amount of the Reservist's full-time ADF earnings for a week (see Subdivision C);

(b) the amount of the Reservist's pre-CFTS earnings for a week (see Subdivision D).

(2) The Reservist must inform the Commission in writing of his or her choice between the full-time ADF earnings and the pre-CFTS earnings.

(3) The Reservist is only entitled to make one choice for all weeks in respect of which this Division applies. The Reservist cannot change his or her choice once it has been made.

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Subdivision C—Working out full-time ADF earnings

109 Working out full-time ADF earnings

(1) The ***full-time ADF earnings*** for a week for an incapacitated Reservist means the amount worked out using the following formula:

$$\text{Reservist's full-time ADF pay for the week} + \text{Reservist's allowance component for the week} + \$100$$

Note: The amount of $100 is indexed under section 183.

(2) The Reservist's ***full-time ADF pay*** for a week means the amount of pay that the Reservist would have earned for the week as a continuous full-time Reservist if:

(a) the Reservist were still a continuous full-time Reservist; and

(b) the Reservist were not incapacitated for service.

Note: The Reservist's full-time ADF pay might be adjusted under Part 5.

(3) The Reservist's ***allowance component*** for a week means the total amount of compensable pay-related allowances that would have been paid to the Reservist for the week if:

(a) the Reservist were still a continuous full-time Reservist; and

(b) the Reservist were not incapacitated for service.

Note: The Reservist's allowance component might be adjusted under Part 5.

(4) The Chief of the Defence Force must advise the Commission in writing of the date on which each compensable pay-related allowance would normally have ceased to be paid to the Reservist if:

(a) the Reservist were still a continuous full-time Reservist; and

(b) the Reservist were not incapacitated for service.

(5) In this section:

compensable pay-related allowance for an incapacitated Reservist means a pay-related allowance:

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(a) that was being paid to the Reservist immediately before completing his or her last period of full-time service; or
(b) that the Reservist would have been paid after completing his or her initial training, as mentioned in section 189.

Subdivision D—Working out pre-CFTS earnings

110 Simplified outline of this Subdivision

The pre-CFTS earnings are worked out by looking back at the period before the Reservist began his or her last period of continuous full-time service. During this period, the Reservist might have been a part-time Reservist as well as being engaged in other work.

The Reservist's pre-CFTS earnings have 2 components: pre-CFTS pay and reserve pay. The Reservist's pre-CFTS pay is based on earnings from work the Reservist was engaged in before beginning the last period of continuous full-time service. The work engaged in might be civilian work or defence work (as some people become continuous full-time Reservists after being Permanent Forces members). The Reservist's reserve pay is based on earnings from service as a part-time Reservist.

However, for a Reservist whose service injury or disease occurred while a continuous full-time Reservist, the Commission may determine pre-CFTS earnings by looking back at the period before the onset date for the Reservist's incapacity instead of the period before the Reservist began his or her last period of continuous full-time service.

111 Working out pre-CFTS earnings

(1) The ***pre-CFTS earnings*** for a week for an incapacitated Reservist means the amount worked out using the following formula:

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$$\text{Reservist's pre-CFTS pay for the week} + \text{Reservist's reserve pay for the week}$$

(2) In this section:

pre-CFTS pay for a person for a week is worked out under section 112.

reserve pay for a person for a week is worked out under section 114.

112 Working out pre-CFTS pay

Pre-CFTS pay for those engaged in work before beginning last period of full-time service

(1) The following formula sets out how to work out the ***pre-CFTS pay*** for a week for an incapacitated Reservist who was engaged in work before beginning his or her last period of continuous full-time service:

$$\left(\text{Reservist's pre-CFTS weekly hours} \times \text{Reservist's pre-CFTS rate of pay}\right) + \text{Reservist's allowances for the week}$$

Note 1: The expressions used in this formula are defined in subsection (4).

Note 2: The Reservist's pre-CFTS pay might be adjusted under Part 5.

(2) If the incapacitated Reservist was required to work overtime on a regular basis in that work, the ***pre-CFTS pay*** for a week also includes the amount worked out using the following formula:

$$\text{Reservist's pre-CFTS overtime hours} \times \text{Reservist's pre-CFTS overtime rate of pay}$$

Note: The expressions used in this formula are defined in subsection (4).

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Pre-CFTS pay for those not working

(3) The ***pre-CFTS pay*** for a week for an incapacitated Reservist who was not engaged in work before beginning his or her last period of full-time service is nil.

Definitions

(4) In this section:

allowances for an incapacitated Reservist for a week is the average amount of allowances (other than expense allowances) paid to the Reservist for a week for his or her work during the example period.

example period has the meaning given by section 113.

pre-CFTS overtime hours for an incapacitated Reservist means the average number of hours of overtime worked each week by the Reservist in his or her work during the example period.

pre-CFTS overtime rate of pay for an incapacitated Reservist means the average hourly overtime rate of pay for the Reservist's overtime in work during the example period.

pre-CFTS rate of pay for an incapacitated Reservist means the Reservist's average hourly ordinary time rate of pay for the Reservist's work during the example period.

pre-CFTS weekly hours for an incapacitated Reservist means the average number of hours worked in each week by the Reservist in his or her work during the example period.

work includes work as a member of the Defence Force (other than as a part-time Reservist).

Note: A person might have been a Permanent Forces member before beginning his or her last period of continuous full-time service. This work is taken into account in working out pre-CFTS pay. However, work as a part-time Reservist is taken into account in working out reserve pay.

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Section 113

113 Definition of *example period* for pre-CFTS pay

(1) For the purposes of section 112, the ***example period*** for an incapacitated Reservist is the latest period of 2 weeks:
  (a) during which the Reservist was continuously engaged in work (as defined in subsection 112(4)); and
  (b) ending before the Reservist began his or her last period of continuous full-time service.

(2) However, the Commission may determine as the ***example period***:
  (a) a different 2 week period that it considers reasonable; or
  (b) a period of a different length that it considers reasonable;
if the pre-CFTS pay for the example period under subsection (1) would not fairly represent the weekly rate at which the Reservist was being paid for his or her work before beginning the continuous full-time service.

114 Working out reserve pay

Reserve pay for persons who were part-time Reservists

(1) The ***reserve pay*** for a week for an incapacitated Reservist who was a part-time Reservist before beginning his or her last period of continuous full-time service is worked out using the following formula:

$$\left(\begin{array}{c}\text{Reservist's}\\ \text{reserve days}\\ \text{for the week}\end{array} \times \begin{array}{c}\text{Reservist's}\\ \text{rate of pay}\\ \text{for a day}\end{array}\right) + \left(\begin{array}{c}\text{Reservist's}\\ \text{pay-related}\\ \text{allowance days}\\ \text{for the week}\end{array} \times \begin{array}{c}\text{Reservist's}\\ \text{amount of}\\ \text{pay-related}\\ \text{allowances}\\ \text{for a day}\end{array}\right)$$

Note: The expressions used in this formula are defined in subsection (4).

(2) The Chief of the Defence Force must advise the Commission in writing of the date on which each compensable pay-related allowance would normally have ceased to be paid to the Reservist if the Reservist were not incapacitated for service.

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Reserve pay for persons who were not part-time Reservists

(3) The ***reserve pay*** for a week for an incapacitated Reservist who was not a part-time Reservist before beginning his or her last period of continuous full-time service is nil.

Definitions

(4) In this section:

amount of pay-related allowances for an incapacitated Reservist for a day means the total amount of compensable pay-related allowances that would have been paid to the Reservist for the day if the Reservist were not incapacitated for service.

Note: The Reservist's pay-related allowances might be adjusted under Part 5.

compensable pay-related allowance for an incapacitated Reservist means a pay-related allowance:

(a) that was being paid to the Reservist immediately before the Reservist began his or her last period of continuous full-time service; or

(b) that would be paid to the Reservist because the Reservist is promoted, as mentioned in paragraph 186(2)(b).

example period for an incapacitated Reservist means:

(a) the latest period of one year:

(i) during which the Reservist was a part-time Reservist; and

(ii) ending before the Reservist began his or her last period of continuous full-time service; or

(b) such other period that the Commission determines is reasonable.

pay-related allowance days for an incapacitated Reservist for a week means the average number of days (if any) served each week during the example period for which the Reservist was paid a pay-related allowance.

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rate of pay for an incapacitated Reservist for a day means the amount of pay that the Reservist would have been paid for the day as a part-time Reservist if the Reservist were not incapacitated for service.

Note: The Reservist's rate of pay might be adjusted under Part 5.

reserve days for an incapacitated Reservist for a week means the average number of days (if any) served each week during the example period for which the Reservist was paid as a part-time Reservist.

114A Example periods for those injured as continuous full-time Reservists

(1) For the purposes of the definition of ***example period*** in sections 113 and 114 for an incapacitated Reservist who was a continuous full-time Reservist when the service injury was sustained, or the service disease was contracted, the Commission may determine, as the end of the example period, a time before the onset date for the Reservist's incapacity for service or work (instead of a time before the Reservist began his or her last period of continuous full-time service).

(2) If the Commission does so, a reference in sections 112, 113 and 114 to a time before the Reservist began his or her last period of continuous full-time service is taken instead to be a reference to a time before the onset date for the Reservist's incapacity.

Subdivision E—Working out actual earnings

115 Working out actual earnings

(1) The ***actual earnings*** for a week for an incapacitated Reservist means the amount worked out using the following formula:

$$\text{Reservist's actual ADF pay for the week} + \text{Reservist's actual pay-related allowances for the week} + \text{Reservist's actual civilian earnings}$$

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(2) The Reservist's ***actual ADF pay*** for a week means the amount of pay that the Reservist earns for the week as a part-time Reservist.

(3) The Reservist's ***actual pay-related allowances*** for a week means the total amount of compensable pay-related allowances (as defined in subsection 114(4)) that are paid to the Reservist for the week.

(4) The Reservist's ***actual civilian earnings*** means the greater of the following amounts:

(a) the weekly amount (if any) that the Reservist is able to earn in suitable work;

(b) the amount the Reservist earns (including from allowances other than expense allowances) for the week from civilian work that he or she undertakes for the week.

Note: Section 181 sets out some matters the Commission must have regard to in determining how much the person is able to earn under paragraph (4)(a).

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Division 6—Working out normal and actual earnings for cadets and declared members

116 Regulations may prescribe methods for working out normal and actual earnings for cadets and declared members

The regulations may prescribe one or more methods of working out the normal earnings and actual earnings for persons who are cadets or declared members.

Note: The regulations may also modify the application of this Part in respect of cadets and declared members (see section 439).

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Division 7—Amount of compensation where a Commonwealth superannuation benefit is received

116A Simplified outline of this Division

This Division tells you how to work out the amount of compensation a member receives for a week if the member receives or has received a benefit under a Commonwealth superannuation scheme. (However, this Division might not apply if the member has applied for the benefit, but has not begun to receive or has not received the benefit (see section 89B).)

The method of working out the amount of compensation depends on whether the member:

(a) is receiving only a Commonwealth superannuation pension (see section 116B); or

(b) has received only a Commonwealth superannuation lump sum (see section 116C); or

(c) has received a lump sum and is receiving a pension (see section 116D).

Basically, the amount of compensation paid is the amount worked out under Division 1 reduced by the amount of superannuation received.

116B Amount of compensation for person receiving only Commonwealth superannuation pension

(1) If paragraph 89A(a) applies to a person, the amount of compensation that the Commonwealth is liable, under section 85, 86 or 87, to pay to the person for a week is worked out using the following formula:

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$$\text{Person's Division 1 compensation amount} - \text{Person's superannuation pension amount}$$

(2) In this Division:

Division 1 compensation amount for a person for a week means the amount of compensation the person would have been paid for the week if subsection 89(1) had applied.

superannuation pension amount for a person who receives a pension for a week under a Commonwealth superannuation scheme means:

(a) if the scheme identifies a part of the pension as attributable to the contributions made under or to the scheme by the Commonwealth or a Commonwealth authority—the amount of that part; or

(b) in any other case, either:

(i) the amount assessed by the Commission to be the part of the pension that is attributable to the contributions made under or to the scheme by the Commonwealth or a Commonwealth authority; or

(ii) if such an assessment cannot be made—the amount of the pension received by the person for the week.

116C Amount of compensation for person who has received only Commonwealth superannuation lump sum

(1) If paragraph 89A(b) applies to a person, the amount of compensation that the Commonwealth is liable, under section 85, 86 or 87, to pay to the person for a week is worked out using the following formula:

$$\text{Person's Division 1 compensation amount} - \frac{\text{Person's superannuation lump sum amount}}{\text{Person's superannuation age-based number}}$$

(2) In this Division:

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superannuation age-based number for a person who receives a lump sum under a Commonwealth superannuation scheme means the number that is advised by the Australian Government Actuary by reference to the person's age on the day on which the lump sum is paid.

superannuation lump sum amount for a person who receives a lump sum under a Commonwealth superannuation scheme means:

(a) if the scheme identifies a part of the lump sum as attributable to the contributions made under or to the scheme by the Commonwealth or a Commonwealth authority—the amount of that part; or

(b) in any other case, either:

(i) the amount assessed by the Commission to be the part of the lump sum that is attributable to the contributions made under or to the scheme by the Commonwealth or a Commonwealth authority; or

(ii) if such an assessment cannot be made—the amount of the lump sum.

Note: Subsection 116B(2) defines ***Division 1 compensation amount***.

116D Amount of compensation for person receiving both superannuation pension and lump sum

If paragraph 89A(c) applies to a person, the amount of compensation that the Commonwealth is liable, under section 85, 86 or 87, to pay to the person for a week is worked out using the following formula:

$$\text{Person's Division 1 compensation amount} - \left(\text{Person's superannuation pension amount for the week} + \frac{\text{Person's superannuation lump sum amount}}{\text{Person's superannuation age-based number}} \right)$$

Note: Subsection 116B(2) defines ***Division 1 compensation amount*** and ***superannuation pension amount***. Subsection 116C(2) defines ***superannuation age-based number*** and ***superannuation lump sum amount***.

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116E No compensation if amount worked out is nil or a negative amount

If an amount of compensation worked out under this Division is nil or a negative amount, then the Commonwealth is not liable to pay the compensation for the week.

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Part 4—Compensation for incapacity for work for former members

Division 1—Entitlement to compensation

117 Simplified outline of this Part

This Part provides for compensation to be provided for former members who are incapacitated for work as a result of a service injury or disease. The Commission must have accepted liability for the injury or disease, and a claim must have been made in respect of the former member, to be entitled to the compensation.

The amount of compensation a person receives for a week depends on the difference between the person's normal and actual earnings for the week. The person's normal earnings are a notional amount. The person's actual earnings are based on how much the person actually earns for the week.

Normal earnings are worked out under Divisions 3 to 8.

Division 3 applies to a person who left the Defence Force as a Permanent Forces member. Division 4 applies to a person who left the Defence Force as a continuous full-time Reservist.

Divisions 5 to 8 apply to a person who left the Defence Force as a part-time Reservist. The Division that applies depends on the person's status (for example, as a Permanent Forces member or a Reservist) when the service injury or disease occurred and on leaving the Defence Force.

Division 9 applies to a person who was a cadet or declared member.

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Part 5 of this Chapter contains other important rules that apply in working out normal earnings, actual earnings and the amount of compensation generally.

118 Compensation for incapacitated former members

(1) The Commonwealth is liable to pay compensation to a person for a week if:

(a) the person is a former member; and

(b) the Commission has accepted liability for a service injury or disease of the person; and

(c) the service injury or disease results in the person's incapacity for work for the week; and

(d) a claim for compensation in respect of the person has been made under section 319.

Note 1: This section might be affected by the following provisions:

(a) sections 50, 52 and 329 (failure to undergo examination or rehabilitation program);

(b) section 119 (aggravations etc.);

(c) sections 120 and 121 (persons who are the age that is 2 years before pension age or older);

(d) section 122 (imprisonment of persons);

(e) section 138 (small amounts of compensation);

(f) section 196 (compensation for part weeks).

Note 2: The Commission is taken to have accepted liability for an injury or disease in certain circumstances (see section 24A).

(2) The amount of compensation that the Commonwealth is liable to pay is:

(a) if a person has chosen to receive a Special Rate Disability Pension under Part 6—the amount worked out under Part 6; or

(b) otherwise—the amount worked out under Division 2 of this Part.

Note: The Commonwealth is not liable to pay compensation if the amount worked out under Division 2 is nil or a negative amount.

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119 No compensation in certain cases relating to aggravations etc. of injuries or diseases

The Commonwealth is only liable, under section 118, to pay compensation in respect of an aggravated injury or disease if it is because of the aggravation or material contribution (whether wholly or partly) that the service injury or disease results in the person's incapacity for work for the week.

120 Compensation for those over pension age

Other than as provided in section 121, the Commonwealth is not liable to pay compensation to a person to whom paragraph 118(2)(b) applies if the person is pension age or older.

121 Compensation for those over the age that is 2 years before pension age

(1) This section applies to a person if:
  (a) paragraph 118(2)(b) applies to the person; and
  (b) the person's service injury is sustained, or service disease is contracted, when the person is the age that is 2 years before pension age or older.

(2) The Commonwealth is only liable, under section 118, to pay compensation to the person for a maximum of 104 weeks (whether consecutive or not) during which the person is incapacitated for work.

122 Persons who are imprisoned

The Commonwealth is not liable to pay compensation for a week to a person to whom section 118 applies if the person is imprisoned for the week in connection with his or her conviction of an offence.

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Division 2—Amount of compensation (other than for those who have chosen to receive a Special Rate Disability Pension)

Subdivision A—Simplified outline of this Division

123 Simplified outline of this Division

This Division tells you how to work out the amount of compensation a former member receives for a week during which he or she is incapacitated for work (other than for a person who has chosen to receive a Special Rate Disability Pension).

Subdivision B—Amount of compensation generally

124 Simplified outline of this Subdivision

Different methods for working out the amount of compensation apply in different situations (such as where a person is receiving or has received a benefit under a Commonwealth superannuation scheme). This Subdivision gives an overview of where these different methods are found in this Division.

The normal rule for working out the amount of compensation is found in Subdivision C.

Special rules apply in the following cases:

(a) retired persons who are receiving or have received a benefit under a Commonwealth superannuation scheme (although the amount of compensation the persons receive might be worked out under Subdivision C if the persons have applied for the benefit, but have not begun to receive or have not received the benefit) (see sections 126 and 126A);

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(b) those maintained in hospitals etc. (see section 127);
(c) those receiving small amounts of compensation (see Subdivision E);
(d) those who choose to receive a Special Rate Disability Pension (see Part 6).

125 Amount of compensation for former members

Amount of compensation generally

(1) Generally, the amount of compensation that the Commonwealth is liable, under section 118, to pay to a person for a week is worked out under Subdivision C.

Amount of compensation for others

(2) Subsection (1) does not apply if any of the following provisions apply instead:
(a) section 126 (retired persons receiving a Commonwealth superannuation benefit);
(b) section 127 (those maintained in hospitals etc.);
(c) Subdivision E (small amounts of compensation);
(d) Part 6 (those who choose to receive a Special Rate Disability Pension).

No compensation if amount worked out is nil or a negative amount

(3) If an amount of compensation worked out under this Division is nil or a negative amount, then the Commonwealth is not liable to pay the compensation for the week.

126 Amount of compensation for retired persons receiving a Commonwealth superannuation benefit

The amount of compensation that the Commonwealth is liable, under section 118, to pay for a week to a person who:

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(a) has retired voluntarily, or is compulsorily retired, from his or her work; and

(b) receives either or both a pension or lump sum under a Commonwealth superannuation scheme as a result of the retirement;

is worked out in accordance with the following sections:

(c) if the person is receiving only a pension—section 134;

(d) if the person has received only a lump sum—section 135;

(e) if the person is receiving a pension and has received a lump sum—section 136.

Note: The Commission may determine that this section does not apply if a person has applied for a benefit under a Commonwealth superannuation scheme, but has not begun to receive or has not received the benefit (see section 126A).

126A Payments before a retired person receives a Commonwealth superannuation benefit

(1) The Commission may, in writing, determine that section 126 does not apply to a person if:

(a) the person has applied for a benefit under a Commonwealth superannuation scheme on the basis of the person's incapacity for service or work, and the application has not been withdrawn; and

(b) the person has not begun to receive or has not received the benefit (as the case requires); and

(c) the person has been notified, in writing:

(i) of the effect of section 126 and this section; and

(ii) that the person may be overpaid while section 126 does not apply to the person; and

(iii) that the overpayments may be recovered under Part 3 of Chapter 11; and

(d) the person has agreed, in writing:

(i) for section 126 not to apply; and

(ii) to notify the Commission if the person withdraws the application for the benefit; and

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(iii) to notify the Commission if the person begins to receive or receives the benefit.

(2) The determination has effect according to its terms.

Revocation of determination

(3) The Commission may, in writing, revoke the determination if the Commission is satisfied that:
(a) the person has withdrawn the application for the benefit; or
(b) the person has begun to receive or has received the benefit; or
(c) the person has not complied with a requirement to provide information, or take any further action, in relation to the application for the benefit.

(4) After a determination is revoked in relation to a person who has begun to receive or has received a benefit under a Commonwealth superannuation scheme, section 126 is taken always to have applied to the person.

Status of instruments

(5) A determination under subsection (1), or a revocation under subsection (3), is not a legislative instrument.

127 Amount of compensation for former members who are maintained in hospital etc.

Application of section

(1) This section applies to a person (the ***patient***) if:
(a) the patient has been continuously maintained in a hospital or other institution as a result of a service injury or disease for at least one year; and
(b) the patient is still being maintained as such a patient; and
(c) the patient has:
(i) no dependants; and
(ii) no dependent young persons (see subsection (4)); and

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(iii) no carer for a dependent young person (see subsection (4)); and

(d) subsection 125(1) would apply to the patient but for the operation of this section.

Amount of compensation

(2) The Commission must determine the amount of compensation that it considers reasonable that the Commonwealth is liable, under section 118, to pay to the patient for each week during which he or she is so maintained. However, the amount must be at least one-half of, and not more than, the amount of compensation that would otherwise have been payable to the patient for a week if subsection 125(1) had applied.

Matters to be considered

(3) In determining the amount, the Commission must have regard to:

(a) the present and probable future needs and expenses of the patient; and

(b) the period during which the patient is likely to remain a patient in the hospital or the other institution.

The Commission must not have regard to any other matter.

Definitions

(4) In this section:

carer for a dependent young person means a person:

(a) who is wholly or mainly maintained by the patient; and

(b) who has the care of a dependent young person (other than a person who has that care only because the patient remunerates that person for caring for the young person).

dependent young person means an eligible young person who is dependent on the patient.

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Subdivision C—Amount of compensation where no Commonwealth superannuation benefit is received

128 Simplified outline of this Subdivision

This Subdivision tells you the normal rule for working out the amount of compensation for a former member.

The person is paid a full amount of compensation for at least the first 45 weeks of the incapacity. A reduced rate of compensation might be paid after that depending on how many hours a week the person is working.

129 Amount of compensation for maximum rate weeks

(1) If subsection 125(1) applies to a person, the amount of compensation that the Commonwealth is liable, under section 118, to pay to the person for a week that is a maximum rate week is worked out using the following formula:

$$\text{Person's normal earnings for the week} \_ \text{Person's actual earnings for the week}$$

Note: Section 132 defines ***normal earnings*** and ***actual earnings***.

(2) In this Subdivision, a week is a ***maximum rate week*** for a person who is incapacitated for work if:

(a) it is a week during which:

(i) the person's incapacity prevents the person from working his or her normal weekly hours; or

(ii) if the person is working his or her normal weekly hours, the person's incapacity prevents the person from working at the level at which he or she worked before the incapacity; and

(b) the total number of hours in that week, and in all previous maximum rate weeks (if any), during which the incapacity

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has prevented the person from so working, does not exceed 45 times the person's normal weekly hours.

Note: Section 132 defines ***normal weekly hours***.

130 Amount of compensation for the week whose hours exceed 45 times the normal weekly hours

(1) If during, but before the end of, a particular week the total number of hours worked out in accordance with paragraph 129(2)(b) exceeds 45 times the normal weekly hours for a person, then:

(a) subsection (2) applies in respect of the hours that elapse before that number is exceeded (the maximum rate hours as defined in subsection (2)); and

(b) subsection (3) applies in respect of the remaining hours in the week (the reduced rate hours as defined in subsection (3)).

Note: Section 132 defines ***normal weekly hours***.

Amount of compensation in respect of maximum rate hours

(2) The amount of compensation that the Commonwealth is liable, under section 118, to pay to a person in respect of the maximum rate hours is worked out using the following formula:

$$\frac{\text{Person's maximum rate hours}}{\text{Person's normal weekly hours}} \times \left(\text{Person's normal earnings for the week} - \text{Person's actual earnings for the week} \right)$$

where:

maximum rate hours for a person means the total number of hours in the week:

(a) that would have counted towards the person's normal weekly hours (whether those hours are worked or not); and

(b) that elapse before the total number of hours worked out in accordance with paragraph 129(2)(b) exceeds 45 times the person's normal weekly hours.

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Note: Section 132 defines ***normal weekly hours***, ***normal earnings*** and ***actual earnings***.

Amount of compensation in respect of reduced rate hours

(3) The amount of compensation that the Commonwealth is liable, under section 118, to pay to a person in respect of the reduced rate hours is worked out using the following formula:

$$\frac{\text{Person's reduced rate hours}}{\text{Person's normal weekly hours}} \times \text{Person's reduced compensation amount}$$

where:

reduced compensation amount for a person means the amount of compensation worked out in accordance with section 131 if that section had applied for the whole week.

reduced rate hours for a person means the total number of hours worked out using the following formula:

$$\text{Person's normal weekly hours} - \text{Person's maximum rate hours}$$

Note: Section 132 defines ***normal weekly hours***. Subsection (2) defines ***maximum rate hours***.

131 Amount of compensation after 45 weeks

(1) If subsection 125(1) applies to a person, the amount of compensation that the Commonwealth is liable, under section 118, to pay to the person for a week (other than a week in respect of which section 129 or 130 applies) is worked out using the following formula:

$$\left(\text{Person's adjustment percentage for the week} \times \text{Person's normal earnings for the week}\right) - \text{Person's actual earnings for the week}$$

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(2) In this section:

adjustment percentage for a person for a week means the following percentage:

(a) if the person is not working during that week—75%;

(b) if the person is working for 25% or less of his or her normal weekly hours during that week—80%;

(c) if the person is working for more than 25% but not more than 50% of his or her normal weekly hours during that week—85%;

(d) if the person is working for more than 50% but not more than 75% of his or her normal weekly hours during that week—90%;

(e) if the person is working for more than 75% but less than 100% of his or her normal weekly hours during that week—95%;

(f) if:

(i) the person is working for 100% or more of the person's normal weekly hours during that week; or

(ii) subsection (3) applies to the person in relation to that week;

100%.

Note: Section 132 defines ***normal weekly hours***, ***normal earnings*** and ***actual earnings***.

(3) This subsection applies to a person in relation to a week beginning on or after the commencement of this subsection and before 1 July 2023 if:

(a) the Commission is satisfied that, on one or more days in that week, the person is undertaking an approved rehabilitation program; and

(b) the Commission is satisfied that, on one or more days in that week and as part of that program, the person is undertaking full-time study.

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(4) For the purposes of paragraph (3)(b), a person is ***undertaking full-time study*** in the circumstances determined in an instrument under subsection (5).

(5) The Commission may, by legislative instrument, determine circumstances for the purposes of subsection (4).

(6) Without limiting subsection (5), the instrument may provide that a person is undertaking full-time study in a period (such as, for example, a period of vacation) that does not fall within a study period.

132 Definitions of *actual earnings*, *normal earnings* and *normal weekly hours*

(1) In this Part:

actual earnings for a person for a week means the greater of the following amounts:

(a) the weekly amount (if any) that the person is able to earn in suitable work;

(b) the amount (if any) that the person earns for the week (including from allowances other than expense allowances) from any work that is undertaken by the person during the week.

Note 1: Bonuses are excluded from the calculation of actual earnings under section 180.

Note 2: Section 181 sets out some matters that the Commission must have regard to in determining the amount that the person is able to earn under paragraph (a).

(2) Use this table to work out the ***normal earnings*** and the ***normal weekly hours*** for a person:

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Definitions of *normal earnings* and *normal weekly hours*

Item	For this type of person	*normal earnings* has the meaning given by...	*normal weekly hours* means...
1	A person who was a Permanent Forces member immediately before last ceasing to be a member	Division 3	37.5 hours
2	A person who was a continuous full-time Reservist immediately before last ceasing to be a member	Division 4	(a) if the person has chosen pre-CFTS earnings under section 143—the number of hours worked out under section 150; or (b) otherwise—37.5 hours
3	A person who is or was a part-time Reservist to whom section 152 applies	Division 5	the number of hours worked out under section 158
4	A person who is or was a part-time Reservist to whom section 160 applies	Division 6	37.5 hours
5	A person who is or was a part-time Reservist to whom section 163 applies	Division 7	37.5 hours
6	A person who is or was a part-time Reservist to whom section 166 applies	Division 8	(a) if the person has chosen pre-CFTS earnings under section 167—the number of hours worked out under section 174; or (b) otherwise—37.5 hours
7	A former cadet or declared member	the regulations (see Division 9)	the number of hours worked out under the regulations (see Division 9)

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Note 1: If a person's normal earnings are less than the relevant minimum wage set by a national minimum wage order, then the person's normal earnings are instead the relevant minimum wage (see section 179).

Note 2: Certain amounts (such as bonuses) are excluded from the calculation of normal earnings under section 180.

Subdivision D—Amount of compensation where a Commonwealth superannuation benefit is received

133 Simplified outline of this Subdivision

This Subdivision tells you how to work out the amount of compensation a person receives for a week if the person receives or has received a benefit under a Commonwealth superannuation scheme. (However, this Subdivision might not apply if the person has applied for the benefit, but has not begun to receive or has not received the benefit (see section 126A).)

The method of working out the amount of compensation depends on whether the person:

(a) is receiving only a Commonwealth superannuation pension (see section 134); or

(b) has received only a Commonwealth superannuation lump sum (see section 135); or

(c) has received a lump sum and is receiving a pension (see section 136).

Basically, the amount of compensation paid is the amount worked out under Subdivision C reduced by the amount of superannuation received.

134 Amount of compensation for retired person receiving only Commonwealth superannuation pension

(1) If paragraph 126(c) applies to a person, the amount of compensation that the Commonwealth is liable, under section 118,

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to pay to the person for a week is worked out using the following formula:

$$\text{Person's Subdivision C compensation amount} \_ \text{Person's superannuation pension amount}$$

(2) In this Subdivision:

Subdivision C compensation amount for a person for a week means the amount of compensation the person would have been paid for the week if Subdivision C had applied.

superannuation pension amount for a person who receives a pension for a week under a Commonwealth superannuation scheme means:

(a) if the scheme identifies a part of the pension as attributable to the contributions made under or to the scheme by the Commonwealth or a Commonwealth authority—the amount of that part; or

(b) in any other case, either:

(i) the amount assessed by the Commission to be the part of the pension that is attributable to the contribution made under or to the scheme by the Commonwealth or a Commonwealth authority; or

(ii) if such an assessment cannot be made—the amount of the pension received by the person for the week.

135 Amount of compensation for retired person who has received only Commonwealth superannuation lump sum

(1) If paragraph 126(d) applies to a person, the amount of compensation that the Commonwealth is liable, under section 118, to pay to the person for a week is worked out using the following formula:

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$$\text{Person's Subdivision C compensation amount} = \frac{\text{Person's superannuation lump sum amount}}{\text{Person's superannuation age-based number}}$$

(2) In this Subdivision:

superannuation age-based number for a person who receives a lump sum under a Commonwealth superannuation scheme means the number that is advised by the Australian Government Actuary by reference to the person's age on the day on which the lump sum is paid.

superannuation lump sum amount for a person who receives a lump sum under a Commonwealth superannuation scheme means:

(a) if the scheme identifies a part of the lump sum as attributable to the contributions made under or to the scheme by the Commonwealth or a Commonwealth authority—the amount of that part; or

(b) in any other case, either:

(i) the amount assessed by the Commission to be the part of the lump sum that is attributable to the contribution made under or to the scheme by the Commonwealth or a Commonwealth authority; or

(ii) if such an assessment cannot be made—the amount of the lump sum.

Note: Subsection 134(2) defines ***Subdivision C compensation amount***.

136 Amount of compensation for retired person receiving both superannuation pension and lump sum

If paragraph 126(e) applies to a person, the amount of compensation that the Commonwealth is liable, under section 118, to pay to the person for a week is worked out using the following formula:

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$$\text{Person's Subdivision C compensation amount} - \left(\text{Person's superannuation pension amount for the week} + \frac{\text{Person's superannuation lump sum amount}}{\text{Person's superannuation age-based number}} \right)$$

Note: Subsection 134(2) defines ***Subdivision C compensation amount*** and ***superannuation pension amount***. Subsection 135(2) defines ***superannuation age-based number*** and ***superannuation lump sum amount***.

Subdivision E—Small amounts of compensation

137 Simplified outline of this Subdivision

Under this Subdivision, a person who receives weekly compensation of $150 or less is entitled to convert that amount into a lump sum if the person is still working or is receiving or has received a benefit under a Commonwealth superannuation scheme.

If the person later stops working because the person's condition deteriorates, or the person stops receiving the superannuation, then the person can be paid compensation on a weekly basis again.

138 Converting small amounts of weekly compensation into lump sum compensation

(1) This section applies if:

(a) apart from this section, the Commonwealth would be liable to pay an amount of compensation, worked out in accordance with subsection 125(1) or section 126, of $150 or less for a person's incapacity for work for a week; and

(b) the person:

(i) is engaged in work; or

(ii) is receiving a pension under a Commonwealth superannuation scheme; or

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(iii) has received a lump sum under a Commonwealth superannuation scheme; and

(c) the Commission is satisfied that the degree of the person's incapacity is unlikely to change; and

(d) the person advises the Commission in writing that he or she chooses to receive a lump sum under this Division rather than weekly payments.

Note 1: The Commonwealth might later be liable for weekly compensation if the person becomes unable to engage in work or stops receiving superannuation (see section 139).

Note 2: The amount of $150 is indexed under section 404.

(2) Instead of being liable to pay compensation for that week and future weeks, the amount of compensation that the Commonwealth is liable to pay is the amount of the lump sum worked out using the following formula:

$$\frac{52 \times \text{Weekly amount} \times \left[\left(\text{Specified number} + 1\right)^{n} - 1\right]}{\text{Specified number} \times \left[\left(\text{Specified number} + 1\right)^{n}\right]}$$

Note: This section might be affected by the following provisions:
(a) sections 50, 52 and 329 (failure to undergo examination or rehabilitation program);
(b) section 122 (persons who are imprisoned);
(c) subsection 125(3) (nil and negative amounts).

(3) In this section:

n means the number worked out using the formula:

$$\frac{\text{Number of days}}{365}$$

where:

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number of days means the number of days in the period beginning on the day after the day on which the person advises the Commission of his or her choice under paragraph (1)(d) and ending:

(a) if the person's service injury is sustained, or service disease is contracted, before the person turns the age that is 2 years before pension age—on the day before the person turns pension age; and

(b) if the person's service injury is sustained, or service disease is contracted, on or after the day on which the person turns the age that is 2 years before pension age—on the day before the person is no longer entitled to compensation under this Part.

specified number means the number specified in writing (in decimal notation) by the Commission for the purposes of this definition.

weekly amount means the amount payable to the person under section 118 for the week in which the person advises the Commission of his or her choice under paragraph (1)(d).

139 Weekly compensation following conversion of weekly amounts to a lump sum

(1) This section applies if:

(a) the Commonwealth has paid a lump sum to a person under section 138 in respect of the person's incapacity for work; and

(b) either:

(i) subparagraph 138(1)(b)(i) applied and the person's condition later deteriorates to the extent that the person is no longer able to engage in work; or

(ii) subparagraph 138(1)(b)(ii) applied and the person stops receiving the pension under the Commonwealth superannuation scheme; and

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(c) the Commission is satisfied that the person's incapacity is likely to continue indefinitely.

(2) The Commonwealth is liable to pay compensation under section 118 for each week during which the person continues to be incapacitated for work.

Note: This section might be affected by the following provisions:
(a) sections 50, 52 and 329 (failure to undergo examination or rehabilitation program);
(b) sections 120 and 121 (persons who are the age that is 2 years before pension age or older);
(c) section 122 (imprisonment of persons);
(d) section 196 (compensation for part weeks).

(3) The amount of compensation that the Commonwealth is liable to pay for a week is worked out using the following formula:

$$\text{Person's Subdivision C or D compensation amount} \_ \text{Weekly amount}$$

Note: The Commonwealth is not liable to pay compensation if the amount worked out is nil or a negative amount (see subsection 125(3)).

(4) In subsection (3):

Subdivision C or D compensation amount for a person for a week means the amount of compensation the person would have been paid for the week if Subdivision C or D had applied.

weekly amount has the same meaning as in subsection 138(3).

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Division 3—Working out normal earnings for certain former Permanent Forces members

140 Simplified outline of this Division

This Division tells you how to work out the normal earnings for a person who left the Defence Force as a Permanent Forces member.

The normal earnings are based on how much the person would have earned for the week if the person were still a Permanent Forces member.

Normal earnings worked out under this Division might be adjusted under Part 5.

141 Working out normal earnings

(1) The ***normal earnings*** for a week for a person who was a Permanent Forces member immediately before last ceasing to be a member of the Defence Force means the amount worked out using the following formula:

$$\text{Person's ADF pay for the week} + \text{Person's allowance component for the week} + \$100$$

Note: The amount of $100 is indexed under section 183.

(2) The person's ***ADF pay*** for a week means the amount of pay that the person would have earned for the week as a Permanent Forces member if:

(a) the person were still a Permanent Forces member; and

(b) the person were not incapacitated for service.

Note: The person's ADF pay for a week might be adjusted under Part 5.

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(3) The person's ***allowance component*** for a week means the total amount of compensable pay-related allowances that would have been paid to the person for the week if:

(a) the person were still a Permanent Forces member; and

(b) the person were not incapacitated for service.

Note: The person's allowance component for a week might be adjusted under Part 5.

(4) The Chief of the Defence Force must advise the Commission in writing of the date on which each compensable pay-related allowance would normally have ceased to be paid to the person if:

(a) the person were still a Permanent Forces member; and

(b) the person were not incapacitated for service.

(5) In this section:

compensable pay-related allowance for a person means a pay-related allowance:

(a) that was being paid to the person immediately before the person last ceased to be a member of the Defence Force; or

(b) that the person would have been paid after completing his or her initial training, as mentioned in section 189.

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Division 4—Working out normal earnings and normal weekly hours for certain former continuous full-time Reservists

Subdivision A—Simplified outline of this Division

142 Simplified outline of this Division

This Division tells you how to work out the normal earnings for a person who left the Defence Force as a continuous full-time Reservist.

The person has a one-off choice between 2 ways of working out normal earnings. Normal earnings can be based on the amount the person would have earned if the person were still a continuous full-time Reservist. (This amount is called the ADF earnings.) Alternatively, normal earnings can be based on the person's earnings from other work engaged in before beginning his or her last period of continuous full-time service. (This amount is called the pre-CFTS earnings.)

Normal earnings worked out under this Division might be adjusted under Part 5.

Subdivision E tells you how to work out the normal weekly hours for a person who chooses the pre-CFTS earnings. (Normal weekly hours for a person who chooses the ADF earnings are 37.5 hours (see subsection 132(2).)

Subdivision B—Working out normal earnings

143 Working out normal earnings

(1) The ***normal earnings*** for a week for a person who was a continuous full-time Reservist immediately before last ceasing to

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be a member of the Defence Force means whichever of the following amounts is chosen by the person:

(a) the amount of the person's ADF earnings for a week (see Subdivision C);

(b) the amount of the person's pre-CFTS earnings for a week (see Subdivision D).

(2) The person must inform the Commission in writing of his or her choice between the ADF earnings and the pre-CFTS earnings.

(3) The person is only entitled to make one choice for all weeks in respect of which subsection (1) applies. The person cannot change his or her choice once it has been made.

Subdivision C—Working out ADF earnings

144 Working out ADF earnings

(1) The ***ADF earnings*** for a week for a person who was a continuous full-time Reservist immediately before last ceasing to be a member of the Defence Force means the amount worked out using the following formula:

$$\text{Person's ADF pay for the week} + \text{Person's allowance component for the week} + \$100$$

Note: The amount of $100 is indexed under section 183.

(2) The person's ***ADF pay*** for a week means the amount of pay that the person would have earned for the week as a continuous full-time Reservist if:

(a) the person were still a continuous full-time Reservist; and

(b) the person were not incapacitated for service.

Note: The person's ADF pay for a week might be adjusted under Part 5.

(3) The person's ***allowance component*** for a week means the total amount of compensable pay-related allowances that would have been paid to the person for the week if:

(a) the person were still a continuous full-time Reservist; and

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(b) the person were not incapacitated for service.

Note: The person's allowance component for a week might be adjusted under Part 5.

(4) The Chief of the Defence Force must advise the Commission in writing of the date on which each compensable pay-related allowance would normally have ceased to be paid to the person if:
(a) the person were still a continuous full-time Reservist; and
(b) the person were not incapacitated for service.

(5) In this section:

compensable pay-related allowance for a person means a pay-related allowance:
(a) that was being paid to the person immediately before the person last ceased to be a member of the Defence Force; or
(b) that the person would have been paid after completing his or her initial training, as mentioned in section 189.

Subdivision D—Working out pre-CFTS earnings

145 Simplified outline of this Subdivision

The pre-CFTS earnings are worked out by looking back at the period before the person began his or her last period of continuous full-time service. During this period, the person might have been a part-time Reservist as well as being engaged in work.

The person's pre-CFTS earnings has 2 components: pre-CFTS pay and reserve pay.

The person's pre-CFTS pay is based on earnings from work the person was engaged in before beginning the last period of continuous full-time service. The work engaged in might be civilian work or defence work (as some people become continuous full-time Reservists after being Permanent Forces members).

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The person's reserve pay is based on earnings from service as a part-time Reservist.

146 Working out pre-CFTS earnings

(1) The ***pre-CFTS earnings*** for a week for a person who was a continuous full-time Reservist immediately before last ceasing to be a member of the Defence Force means the amount worked out using the following formula:

$$\text{Person's pre-CFTS pay for the week} + \text{Person's reserve pay for the week}$$

(2) In this section:

pre-CFTS pay for a person for a week means the amount worked out under section 147.

reserve pay for a person for a week means the amount worked under section 149.

147 Working out pre-CFTS pay

Pre-CFTS pay for those engaged in work before beginning last period of full-time service

(1) The following formula sets out how to work out the ***pre-CFTS pay*** for a week for a person who was engaged in work before beginning his or her last period of continuous full-time service:

$$\left(\text{Person's pre-CFTS weekly hours} \times \text{Person's pre-CFTS rate of pay} \right) + \text{Person's allowances for the week}$$

Note 1: The expressions used in this formula are defined in subsection (4).

Note 2: The person's pre-CFTS pay might be adjusted under Part 5.

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(2) If the person was required to work overtime on a regular basis in that work, the ***pre-CFTS pay*** for a week also includes the amount worked out using the following formula:

$$\text{Person's pre-CFTS overtime hours} \times \text{Person's pre-CFTS overtime rate of pay}$$

Note: The expressions used in this formula are defined in subsection (4).

Pre-CFTS pay for those not working

(3) The ***pre-CFTS pay*** for a week for a person who was not engaged in work before beginning his or her last period of continuous full-time service is nil.

Definitions

(4) In this section:

allowances for a person for a week is the average amount of allowances (other than expense allowances) paid to the person for a week for his or her work during the example period.

example period has the meaning given by section 148.

pre-CFTS overtime hours for a person means the average number of hours of overtime worked each week by the person in his or her work during the example period.

pre-CFTS overtime rate of pay for a person means the average hourly overtime rate of pay for the person's overtime in his or her work during the example period.

pre-CFTS rate of pay for a person means the person's average hourly ordinary time rate of pay for the person's work during the example period.

pre-CFTS weekly hours for a person means the average number of hours worked in each week by the person in his or her work during the example period.

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work includes work as a member of the Defence Force (other than as a part-time Reservist).

Note: A person might have been a Permanent Forces member before beginning his or her last period of continuous full-time service. This work is taken into account in the pre-CFTS pay. However, work as a part-time Reservist is taken into account in working out the reserve pay.

148 Definition of *example period* for former continuous full-time Reservists

(1) For the purposes of section 147, the ***example period*** for a person who was a continuous full-time Reservist immediately before last ceasing to be a member of the Defence Force is the latest period of 2 weeks:

(a) during which the person was continuously engaged in work (as defined in subsection 147(4)); and

(b) ending before the person began his or her last period of continuous full-time service.

(2) However, the Commission may determine as the ***example period***:

(a) a different 2 week period that it considers reasonable; or

(b) a period of a different length that it considers reasonable;

if the pre-CFTS pay for the example period under subsection (1) would not fairly represent the weekly rate at which the person was being paid for his or her work before beginning the continuous full-time service.

149 Working out reserve pay

Reserve pay for persons who were part-time Reservists

(1) The ***reserve pay*** for a week for a person who was a part-time Reservist immediately before beginning his or her last period of continuous full-time service is the amount worked out using the following formula:

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$$\left(\begin{array}{c}\text{Person's}\\ \text{reserve days}\\ \text{for the week}\end{array} \times \begin{array}{c}\text{Person's}\\ \text{rate of pay}\\ \text{for a day}\end{array}\right) + \left(\begin{array}{c}\text{Person's}\\ \text{pay-related}\\ \text{allowance days}\\ \text{for the week}\end{array} \times \begin{array}{c}\text{Person's}\\ \text{amount of}\\ \text{pay-related}\\ \text{allowances}\\ \text{for a day}\end{array}\right)$$

Note: The expressions used in this subsection are defined in subsection (4).

(2) The Chief of the Defence Force must advise the Commission in writing of the date on which each compensable pay-related allowance would normally have ceased to be paid to the person if:
  (a) the person were still a part-time Reservist; and
  (b) the Reservist were not incapacitated for service.

Reserve pay for persons who were not part-time Reservists

(3) The ***reserve pay*** for a week for a person who was not a part-time Reservist immediately before beginning his or her last period of continuous full-time service is nil.

Definitions

(4) In this section:

amount of pay-related allowances for a person for a day means the total amount of compensable pay-related allowances that would have been paid to the person for the day if:
  (a) the person were still a part-time Reservist; and
  (b) the person were not incapacitated for service.

Note: The person's pay-related allowances might be adjusted under Part 5.

compensable pay-related allowance for a person means a pay-related allowance:
  (a) that was being paid to the person immediately before the person began his or her last period of continuous full-time service; or
  (b) that would be paid to the person because the person is promoted, as mentioned in section 186.

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example period for a person who was a part-time Reservist immediately before beginning his or her last period of continuous full-time service is:

(a) the latest period of one year:
  (i) during which the person was a part-time Reservist; and
  (ii) ending before the person began that continuous full-time service; or
(b) such other period that the Commission determines is reasonable.

pay-related allowance days for a person for a week means the average number of days (if any) served each week during the example period for which the person was paid an amount of pay-related allowances.

rate of pay for a person for a day means the amount of pay that the person would have been paid for the day as a part-time Reservist if:

(a) the person were still a part-time Reservist; and
(b) the person were not incapacitated for service.

Note: The person's rate of pay might be adjusted under Part 5.

reserve days for a person for a week means the average number of days (if any) served each week during the example period for which the person was paid as a part-time Reservist.

Subdivision E—Working out normal weekly hours for persons who have chosen pre-CFTS earnings

150 Working out normal weekly hours for persons who have chosen pre-CFTS earnings

(1) The ***normal weekly hours*** for a person who has chosen the pre-CFTS earnings under section 143 are worked out using the following formula:

$$\text{Person's pre-CFTS weekly hours} + \text{Person's pre-CFTS overtime hours} + \text{Person's ADF hours}$$

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(2) In this section:

ADF hours for a person means the average number of hours per week (if any) during the example period (as defined in subsection 149(4)) for which the person was paid as a part-time Reservist.

pre-CFTS overtime hours has the meaning given by subsection 147(4).

pre-CFTS weekly hours has the meaning given by subsection 147(4).

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Division 5—Working out normal earnings and normal weekly hours for former part-time Reservists who were engaged in civilian work

Subdivision A—Simplified outline of this Division

151 Simplified outline of this Division

This Division tells you how to work out the normal earnings for a person who:

(a) was a part-time Reservist when the service injury or disease occurred; and

(b) was still a part-time Reservist when he or she left the Defence Force; and

(c) was working in civilian work before leaving the Defence Force.

The person's normal earnings are made up of an ADF component and a civilian component. The ADF component is based on how much the person would have earned as a part-time Reservist if the person were still a part-time Reservist. The civilian component is based on how much the person earned from civilian work during an example period taken before the person left the Defence Force.

Normal earnings worked out under this Division might be adjusted under Part 5.

Subdivision E tells you how to work out the normal weekly hours for the person.

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Subdivision B—Working out normal earnings of former part-time Reservists who were engaged in civilian work

152 Application of this Division to former part-time Reservists who were engaged in civilian work

This Division applies to a person in respect of a week if:

(a) the person was a part-time Reservist immediately before last ceasing to be a member of the Defence Force; and

(b) the person is incapacitated for work for the week as a result of a service injury or disease; and

(c) the person was also a part-time Reservist when the service injury was sustained or the service disease was contracted; and

(d) the person was engaged in civilian work before last ceasing to be a member of the Defence Force.

The person is called an ***incapacitated person*** in this Division.

153 Working out normal earnings

(1) The ***normal earnings*** for an incapacitated person for a week is the amount worked out using the following formula:

$$\text{Person's ADF component for the week} + \text{Person's civilian component for the week}$$

(2) In this section:

ADF component for an incapacitated person for a week means the amount worked out under Subdivision C.

civilian component for an incapacitated person for a week means the amount worked out under Subdivision D.

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Subdivision C—Working out the ADF component of normal earnings

154 Working out the ADF component of normal earnings

(1) The ***ADF component*** for a week for an incapacitated person is the amount worked out using the following formula:

$$\left(\begin{array}{c}\text{Person's reserve days for the week}\end{array} \times \begin{array}{c}\text{Person's rate of pay for a day}\end{array}\right) + \left(\begin{array}{c}\text{Person's pay-related allowance days for the week}\end{array} \times \begin{array}{c}\text{Person's amount of pay-related allowances for a day}\end{array}\right)$$

Note: The expressions used in this subsection are defined in subsection (3).

(2) The Chief of the Defence Force must advise the Commission in writing of the date on which each compensable pay-related allowance would normally have ceased to be paid to the person if:

(a) the person were still a part-time Reservist; and

(b) the person were not incapacitated for service.

(3) In this section:

amount of pay-related allowances for an incapacitated person for a day means the total amount of compensable pay-related allowances that would have been paid to the person for the day as a part-time Reservist if:

(a) the person were still a part-time Reservist; and

(b) the person were not incapacitated for service.

Note: The person's pay-related allowances might be adjusted under Part 5.

compensable pay-related allowance for an incapacitated person means a pay-related allowance:

(a) that was being paid to the person immediately before the person last ceased to be a member of the Defence Force; or

(b) that the person would have been paid after completing his or her initial training, as mentioned in section 189.

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example period has the meaning given by section 155.

pay-related allowance days for an incapacitated person for a week means the average number of days (if any) served each week during the example period for which the person was paid an amount of pay-related allowances.

rate of pay for an incapacitated person for a day means the amount of pay that the person would have been paid for the day as a part-time Reservist if:

(a) the person were still a part-time Reservist; and

(b) the person were not incapacitated for service.

Note: The person's rate of pay might be adjusted under Part 5.

reserve days for an incapacitated person for a week means the average number of days (if any) served each week during the example period for which the person was paid as a part-time Reservist.

155 Definition of *example period* for ADF component of normal earnings

For the purposes of section 154 and the definitions of ***defence days*** and ***defence hours*** in section 158, the ***example period*** for an incapacitated person is:

(a) the latest period of one year:

(i) during which the person was a part-time Reservist; and

(ii) ending before the person last ceased to be a member of the Defence Force; or

(b) such other period that the Commission determines is reasonable.

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Subdivision D—Working out the civilian component of normal earnings

156 Working out the civilian component of normal earnings

(1) The ***civilian component*** for a week for an incapacitated person is the amount worked out using the following formula:

$$\text{Average number of days per week (if any) during the example period for which the person was paid civilian daily earnings} \times \text{Person's civilian daily earnings}$$

(2) The following formula sets out how to work out the ***civilian daily earnings*** for an incapacitated person:

$$\left(\text{Person's civilian daily hours} \times \text{Person's civilian rate of pay}\right) + \text{Person's allowances for the day}$$

Note 1: The expressions used in this formula are defined in subsection (4).

Note 2: The person's civilian daily earnings might be adjusted under Part 5.

(3) If the incapacitated person was required to work overtime on a regular basis in his or her work, the ***civilian daily earnings*** also include the amount worked out using the following formula:

$$\text{Person's civilian overtime hours} \times \text{Person's civilian overtime rate of pay}$$

Note: The expressions used in this formula are defined in subsection (4).

(4) In this section:

allowances for an incapacitated person for a day means the average amount of allowances (other than expense allowances) paid to the person for a day for his or her civilian work during the example period.

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civilian daily hours for an incapacitated person means the average number of hours worked each day by the person in his or her civilian work during the example period.

civilian overtime hours for an incapacitated person means the average number of hours of overtime worked each day by the person in his or her civilian work during the example period.

civilian overtime rate of pay for an incapacitated person means the person's average hourly overtime rate of pay for the person's overtime in his or her civilian work during the example period.

civilian rate of pay for an incapacitated person means the average hourly ordinary time rate of pay for the person's civilian work during the example period.

example period has the meaning given by section 157.

157 Definition of *example period* for the civilian component of normal earnings

(1) For the purposes of this section 156 and the definition of ***civilian days*** in section 158, the ***example period*** for an incapacitated person is the latest period of 2 weeks:

(a) during which the person was continuously engaged in civilian work; and

(b) ending before the person last ceased to be a member of the Defence Force.

(2) However, the Commission may determine as the ***example period***:

(a) a different 2 week period that it considers reasonable; or

(b) a period of a different length that it considers reasonable;

if the civilian daily earnings for the example period under subsection (1) would not fairly represent the daily rate at which the person was being paid for his or her civilian work before last ceasing to be a member of the Defence Force.

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Subdivision E—Working out normal weekly hours

158 Working out normal weekly hours

(1) The ***normal weekly hours*** for an incapacitated person means the amount worked out using the following formula:

$$\left(\begin{array}{c}\text{Person's}\\ \text{defence}\\ \text{days}\end{array} \times \begin{array}{c}\text{Person's}\\ \text{defence}\\ \text{hours}\end{array}\right) + \left[\begin{array}{c}\text{Person's}\\ \text{civilian}\\ \text{days}\end{array} \times \left(\begin{array}{c}\text{Person's}\\ \text{civilian}\\ \text{daily}\\ \text{hours}\end{array} + \begin{array}{c}\text{Person's}\\ \text{civilian}\\ \text{overtime}\\ \text{hours}\end{array}\right)\right]$$

(2) In this section:

civilian daily hours has the meaning given by subsection 156(4).

civilian days for an incapacitated person means the average number of days (if any) per week during the example period for which the person was paid civilian daily earnings.

civilian overtime hours has the meaning given by subsection 156(4).

defence days for an incapacitated person means the average number of days (if any) per week during the example period for which the person was paid as a part-time Reservist.

defence hours for an incapacitated person means the average number of hours per day during the example period for which the person was paid as a part-time Reservist.

example period:

(a) for the purposes of the definition of ***defence days*** and ***defence hours***—has the meaning given by section 155; and

(b) for the purposes of the definition of ***civilian days***—has the meaning given by section 157.

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Division 6—Working out normal earnings for former part-time Reservists who were not engaged in civilian work

159 Simplified outline of this Division

This Division tells you how to work out the normal earnings for a person who:

(a) was a part-time Reservist when the service injury or disease occurred; and

(b) was still a part-time Reservist when he or she left the Defence Force; and

(c) was not working in civilian work before leaving the Defence Force.

Basically, the person's normal earnings are 7 times the daily rate that the person would be paid if the person were still a part-time Reservist.

Normal earnings worked out under this Division might be adjusted under Part 5.

160 Application of this Division to former part-time Reservists who were not engaged in civilian work

This Division applies to a person in respect of a week if:

(a) the person was a part-time Reservist immediately before last ceasing to be a member of the Defence Force; and

(b) the person is incapacitated for work for the week as a result of a service injury or disease; and

(c) the person was a part-time Reservist when the service injury was sustained or the service disease was contracted; and

(d) the person was not engaged in civilian work before last ceasing to be a member of the Defence Force.

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The person is called an ***incapacitated person*** in this Division.

161 Working out normal earnings

(1) The ***normal earnings*** for an incapacitated person for a week means the amount worked out using the following formula:

$$\left(7 \times \begin{array}{c}\text{Person's}\\ \text{rate of pay}\\ \text{for a day}\end{array}\right) + \left(\begin{array}{c}\text{Person's}\\ \text{pay-related}\\ \text{allowance days}\\ \text{for the week}\end{array} \times \begin{array}{c}\text{Person's amount}\\ \text{of pay-related}\\ \text{allowances}\\ \text{for a day}\end{array}\right)$$

Note: The expressions used in this formula are defined in subsection (3).

(2) The Chief of the Defence Force must advise the Commission in writing of the date on which each compensable pay-related allowance would normally have ceased to be paid to the person if:
  (a) the person were still a part-time Reservist; and
  (b) the person were not incapacitated for service.

(3) In this section:

amount of pay-related allowances for an incapacitated person for a day means the total amount of compensable pay-related allowances that would have been paid to the person for the day as a part-time Reservist if:
  (a) the person were still a part-time Reservist; and
  (b) the person were not incapacitated for service.

Note: The person's pay-related allowances might be adjusted under Part 5.

compensable pay-related allowance for an incapacitated person means a pay-related allowance:
  (a) that was being paid to the person immediately before the person last ceased to be a member of the Defence Force; or
  (b) that the person would have been paid after completing his or her initial training, as mentioned in section 189.

example period for an incapacitated person is:

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(a) the latest period of one year:
  (i) during which the person was a part-time Reservist; and
  (ii) ending before the person ceased to be a member of the Defence Force; or
(b) such other period that the Commission determines is reasonable.

pay-related allowance days for an incapacitated person for a week means the average number of days per week (if any) served each week during the example period for which the person was paid an amount of pay-related allowances.

rate of pay for an incapacitated person for a day means the rate of pay that the person would have been paid for the day as a part-time Reservist if:

(a) the person were still a part-time Reservist; and
(b) the person were not incapacitated for service.

Note: The person's rate of pay might be adjusted under Part 5.

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Division 7—Working out normal earnings for former part-time Reservists who were previously Permanent Forces members

162 Simplified outline of this Division

This Division tells you how to work out the normal earnings for a person:

(a) who was a Permanent Forces member or a continuous full-time Reservist when the service injury or disease occurred; and

(b) who was a part-time Reservist when he or she left the Defence Force; and

(c) whose last period of full-time service was as a Permanent Forces member.

The normal earnings are based on how much the person would have earned if the person were still a Permanent Forces member.

Normal earnings worked out under this Division might be adjusted under Part 5.

163 Application of this Division to former part-time Reservists who were previously Permanent Forces members

This Division applies to a person in respect of a week if:

(a) the person was a part-time Reservist immediately before last ceasing to be a member of the Defence Force; and

(b) the person is incapacitated for work for the week as a result of a service injury or disease; and

(c) the person was a Permanent Forces member, or a continuous full-time Reservist, when the service injury was sustained or the service disease was contracted; and

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(d) the person was a Permanent Forces member immediately before completing his or her last period of full-time service.

The person is called an ***incapacitated person*** in this Division.

164 Working out normal earnings

(1) The ***normal earnings*** for a week for an incapacitated person means the amount worked out using the following formula:

$$\text{Person's full-time ADF pay for the week} + \text{Person's allowance component for the week} + \$100$$

Note: The amount of $100 is indexed under section 183.

(2) The person's ***full-time ADF pay*** for a week means the amount of pay that the person would have earned for the week as a Permanent Forces member if:

(a) the person were still a Permanent Forces member; and

(b) the person were not incapacitated for service.

Note: The person's full-time ADF pay might be adjusted under Part 5.

(3) The person's ***allowance component*** for a week means the total amount of compensable pay-related allowances that would have been paid to the person for the week if:

(a) the person were still a Permanent Forces member; and

(b) the person were not incapacitated for service.

Note: The person's allowance component might be adjusted under Part 5.

(4) The Chief of the Defence Force must advise the Commission in writing of the date on which each compensable pay-related allowance would normally have ceased to be paid to the person if:

(a) the person were still a Permanent Forces member; and

(b) the person were not incapacitated for service.

(5) In this section:

compensable pay-related allowance for an incapacitated person means a pay-related allowance:

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(a) that was being paid to the person immediately before completing his or her last period of full-time service; or

(b) that the person would have been paid after completing his or her initial training, as mentioned in section 189.

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Division 8—Working out normal earnings and normal weekly hours for former part-time Reservists who were previously continuous full-time Reservists

Subdivision A—Simplified outline of this Division

165 Simplified outline of this Division

This Division tells you how to work out the normal earnings for a person:

(a) who was a Permanent Forces member or a continuous full-time Reservist when the service injury or disease occurred; and

(b) who was a part-time Reservist when he or she left the Defence Force; and

(c) whose last period of full-time service was as a continuous full-time Reservist.

The person has a one-off choice between 2 ways of working out normal earnings. Normal earnings can be based on the amount the person would have earned if the person were still a continuous full-time Reservist. (This amount is called the full-time ADF earnings.) Alternatively, normal earnings can be based on the person's earnings from other work engaged in before beginning his or her last period of continuous full-time service. (This amount is called the pre-CFTS earnings.)

Normal earnings worked out under this Division might be adjusted under Part 5.

Subdivision D tells you how to work out the normal weekly hours for a person who chooses the pre-CFTS earnings. (Normal weekly

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hours for a person who chooses the ADF earnings are 37.5 hours (see subsection 132(2).)

Subdivision B—Working out normal earnings for former part-time Reservists who were previously continuous full-time Reservists

166 Application of this Division to former part-time Reservists who were previously continuous full-time Reservists

This Division applies to a person in respect of a week if:

(a) the person was a part-time Reservist immediately before last ceasing to be a member of the Defence Force; and

(b) the person is incapacitated for work for the week as a result of a service injury or disease; and

(c) the person was a Permanent Forces member, or a continuous full-time Reservist, when the service injury was sustained or the service disease was contracted; and

(d) the person was a continuous full-time Reservist immediately before completing his or her last period of full-time service.

The person is called an ***incapacitated person*** in this Division.

167 Working out normal earnings

(1) The ***normal earnings*** for an incapacitated person for a week means whichever of the following amounts is chosen by the person:

(a) the amount of the person's full-time ADF earnings for a week (see Subdivision C);

(b) the amount of the person's pre-CFTS earnings for a week (see Subdivision D).

(2) The person must inform the Commission in writing of his or her choice between the full-time ADF earnings and the pre-CFTS earnings.

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(3) The person is only entitled to make one choice for all weeks in respect of which subsection (1) applies. The person cannot change his or her choice once it has been made.

Subdivision C—Working out full-time ADF earnings

168 Working out full-time ADF earnings

(1) The ***full-time ADF earnings*** for a week for an incapacitated person means the amount worked out using the following formula:

$$\text{Person's full-time ADF pay for the week} + \text{Person's allowance component for the week} + \$100$$

Note: The amount of $100 is indexed under section 183.

(2) The person's ***full-time ADF pay*** for a week means the amount of pay that the person would have earned for the week as a continuous full-time Reservist if:

(a) the person were still a continuous full-time Reservist; and

(b) the person were not incapacitated for service.

Note: The person's full-time ADF pay might be adjusted under Part 5.

(3) The person's ***allowance component*** for a week means the total amount of compensable pay-related allowances that would have been paid to the person for the week if:

(a) the person were still a continuous full-time Reservist; and

(b) the person were not incapacitated for service.

Note: The person's allowance component might be adjusted under Part 5.

(4) The Chief of the Defence Force must advise the Commission in writing of the date on which each compensable pay-related allowance would normally have ceased to be paid to the person if:

(a) the person were still a continuous full-time Reservist; and

(b) the person were not incapacitated for service.

(5) In this section:

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compensable pay-related allowance for an incapacitated person means a pay-related allowance:

(a) that was being paid to the person immediately before completing his or her last period of full-time service; or

(b) that the person would have been paid after completing his or her initial training, as mentioned in section 189.

Subdivision D—Working out pre-CFTS earnings

169 Simplified outline of this Subdivision

The pre-CFTS earnings are worked out by looking back at the period before the person began his or her last period of continuous full-time service. During this period, the person might have been a part-time Reservist as well as being engaged in work.

The person's pre-CFTS earnings have 2 components: pre-CFTS pay and reserve pay.

The person's pre-CFTS pay is based on earnings from work the person was engaged in before beginning the last period of continuous full-time service. The work engaged in might be civilian work or defence work (as some people become continuous full-time Reservists after being Permanent Forces members).

The person's reserve pay is based on earnings from service as a part-time Reservist.

However, for a person whose service injury or disease occurred while a continuous full-time Reservist, the Commission may determine pre-CFTS earnings by looking back at the period before the person last ceased to be a member of the Defence Force instead of the period before the person began his or her last period of continuous full-time service.

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Section 170

170 Working out pre-CFTS earnings

(1) The ***pre-CFTS earnings*** for a week for an incapacitated person means the amount worked out using the following formula:

$$\text{Person's pre-CFTS pay for the week} + \text{Person's reserve pay for the week}$$

(2) In this section:

pre-CFTS pay for an incapacitated person for a week means the amount worked out under section 171.

reserve pay for an incapacitated person for a week means the amount worked out under section 173.

171 Working out pre-CFTS pay

Pre-CFTS pay for those engaged in work before beginning last period of full-time service

(1) The following formula sets out how to work out the ***pre-CFTS pay*** for a week for an incapacitated person who was engaged in work before beginning his or her last period of continuous full-time service:

$$\left(\text{Person's pre-CFTS weekly hours} \times \text{Person's pre-CFTS rate of pay} \right) + \text{Person's allowances for the week}$$

Note 1: The expressions used in this formula are defined in subsection (4).

Note 2: The person's pre-CFTS pay might be adjusted under Part 5.

(2) If the incapacitated person was required to work overtime on a regular basis in that work, the ***pre-CFTS pay*** for the week also includes the amount worked out using the following formula:

$$\text{Person's pre-CFTS overtime hours} \times \text{Person's pre-CFTS overtime rate of pay}$$

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Note: The expressions used in this formula are defined in subsection (4).

Pre-CFTS pay for those not working

(3) The ***pre-CFTS pay*** for a week for an incapacitated person who was not engaged in work before beginning his or her last period of continuous full-time service is nil.

Definitions

(4) In this section:

allowances for an incapacitated person for a week is the average amount of allowances (other than expense allowances) paid to the person for a week for his or her work during the example period.

example period has the meaning given by section 172.

pre-CFTS overtime hours for an incapacitated person means the average number of hours of overtime worked each week by the person in his or her work during the example period.

pre-CFTS overtime rate of pay for an incapacitated person means the average hourly overtime rate of pay for the person's overtime in his or her work during the example period.

pre-CFTS rate of pay for an incapacitated person means the average hourly ordinary time rate of pay for the person's work during the example period.

pre-CFTS weekly hours for an incapacitated person means the average number of hours worked in each week by the person in his or her work during the example period.

work includes work as a member of the Defence Force (other than as a part-time Reservist).

Note: A person might have been a Permanent Forces member before beginning his or her last period of continuous full-time service. This work is taken into account in the pre-CFTS pay. However, work as a part-time Reservist is taken into account in the reserve pay.

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172 Definition of *example period* for the pre-CFTS pay

(1) For the purposes of this section 171, the ***example period*** for an incapacitated person is the latest period of 2 weeks:
  (a) during which the person was continuously engaged in work (as defined in subsection 171(4)); and
  (b) ending before the person began his or her last period of continuous full-time service.

(2) However, the Commission may determine as the ***example period***:
  (a) a different 2 week period that it considers reasonable; or
  (b) a period of a different length that it considers reasonable;
if the pre-CFTS pay for the example period under subsection (1) would not fairly represent the weekly rate at which the person was being paid for his or her work before beginning the continuous full-time service.

173 Working out reserve pay

Reserve pay for persons who were part-time Reservists

(1) The ***reserve pay*** for a week for an incapacitated person who was a part-time Reservist immediately before beginning his or her last period of continuous full-time service is the amount worked out using the following formula:

$$\left(\begin{array}{c}\text{Person's reserve days for the week}\end{array} \times \begin{array}{c}\text{Person's rate of pay for a day}\end{array}\right) + \left(\begin{array}{c}\text{Person's pay-related allowance days for the week}\end{array} \times \begin{array}{c}\text{Person's amount of pay-related allowances for a day}\end{array}\right)$$

Note: The expressions used in this formula are defined in subsection (4).

(2) The Chief of the Defence Force must advise the Commission in writing of the date on which each compensable pay-related allowance would normally have ceased to be paid to the person if:
  (a) the person were still a part-time Reservist; and

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(b) the person were not incapacitated for service.

Reserve pay for persons who did not serve as part-time Reservists

(3) The ***reserve pay*** for a week for an incapacitated Reservist who was not serving as a part-time Reservist immediately before beginning his or her last period of continuous full-time service is nil.

Definitions

(4) In this section:

amount of pay-related allowances for an incapacitated person for a day means the total amount of compensable pay-related allowances that would have been paid to the person for the day if:

(a) the person were still a part-time Reservist; and

(b) the person were not incapacitated for service.

Note: The person's pay-related allowance might be adjusted under Part 5.

compensable pay-related allowance for an incapacitated person means a pay-related allowance that was being paid to the person immediately before beginning his or her last period of continuous full-time service.

example period for an incapacitated person is:

(a) the latest period of one year:

(i) during which the person was a part-time Reservist; and

(ii) ending before the person began his or her last period of continuous full-time service; or

(b) such other period that the Commission determines is reasonable.

pay-related allowance days for an incapacitated person for a week means the average number of days (if any) served each week during the example period for which the person was paid a pay-related allowance.

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rate of pay for a person for a day means the amount of pay that the person would have been paid for the day as a member of the Reserves if:

(a) the person were still a part-time Reservist; and

(b) the person were not incapacitated for service.

Note: The person's rate of pay might be adjusted under Part 5.

reserve days for an incapacitated person for a week means the average number of days (if any) served each week during the example period for which the person was paid as a part-time Reservist.

173A Example periods for those injured as continuous full-time Reservists

(1) For the purposes of the definition of ***example period*** in sections 172 and 173 for an incapacitated person who was a continuous full-time Reservist when the service injury was sustained, or the service disease was contracted, the Commission may determine, as the end of the example period, a time before the person last ceased to be a member of the Defence Force (instead of a time before the person began his or her last period of continuous full-time service).

(2) If the Commission does so, a reference in sections 171, 172 and 173 to a time before the person began his or her last period of continuous full-time service is taken instead to be a reference to a time before the person last ceased to be a member of the Defence Force.

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Subdivision E—Working out normal weekly hours for persons who have chosen pre-CFTS earnings

174 Working out normal weekly hours for persons who have chosen pre-CFTS earnings

(1) The ***normal weekly hours*** for an incapacitated person who has chosen the pre-CFTS earnings under section 167 means the amount worked out using the following formula:

$$\text{Person's pre-CFTS weekly hours} + \text{Person's pre-CFTS overtime hours} + \text{Person's ADF hours}$$

(2) In this section:

ADF hours for an incapacitated person means the average number of hours per week (if any) during the example period (as defined in subsection 173(4)) for which the person was paid as a part-time Reservist.

pre-CFTS overtime hours has the meaning given by subsection 171(4).

pre-CFTS weekly hours has the meaning given by subsection 171(4).

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Division 9—Working out normal and actual earnings and normal weekly hours for persons who were cadets or declared members

175 Regulations may prescribe methods for working out normal and actual earnings and normal weekly hours for cadets and declared members

The regulations may prescribe one or more methods of working out normal earnings, actual earnings and normal weekly hours for persons who were cadets and declared members.

Note: The regulations may also modify the application of this Part in respect of cadets and declared members (see section 439).

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Part 5—Adjusting the amount of compensation for incapacity for service or work

Division 1—Introduction

176 Simplified outline of this Part

This Part sets out some important rules relating to a person's normal earnings, actual earnings and the amount of compensation paid under Part 3 or 4.

Division 2 has some general rules that apply when working out normal and actual earnings.

Division 3 adjusts normal earnings for persons whose normal earnings relate to ADF pay.

Division 4 adjusts normal earnings for persons whose normal earnings relate to civilian pay.

Division 5 sets out how to work out compensation for part of a week.

177 Definitions of *normal earnings* and *actual earnings*

In this Part:

actual earnings has the meaning given by subsection 89(3) or 132(1) (as the case requires).

normal earnings has the meaning given by subsection 89(3) or 132(2) (as the case requires).

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Division 2—General rules relating to normal and actual earnings etc.

178 Simplified outline of this Division

This Division deals with the following matters:

(a) the amount of a person's normal earnings if his or her normal earnings are less than the relevant minimum wage set by a national minimum wage order;

(b) amounts to be excluded in working out normal and actual earnings;

(c) matters to be considered when determining actual earnings;

(d) indexation.

179 Normal earnings that are less than the minimum wage

If a person's normal earnings for a week are less than an amount calculated by multiplying the relevant minimum wage set by a national minimum wage order (under section 294 of the *Fair Work Act 2009*) by 38 hours per week, then the person's normal earnings for the week are instead the amount calculated by multiplying the relevant minimum wage set by a national minimum wage order (under section 294 of the *Fair Work Act 2009*) by 38 hours per week.

180 Amounts that are excluded when working out normal and actual earnings

(1) In working out normal earnings, do not include:

(a) any amount of a bonus that is earned by the person (whether paid as a lump sum or periodically); or

(b) the amount of any expected increase due to:

(i) the reasonable expectation of a bonus; or

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(ii) the reasonable expectation of a promotion; or
(iii) the reasonable expectation of a posting.

(2) In working out actual earnings, do not include any amount of a bonus that is earned by the person (whether paid as a lump sum or periodically).

181 Matters to be considered in determining actual earnings

(1) This section sets out those matters that the Commission must have regard to in determining the weekly amount that a person is able to earn in suitable work for the purposes of:
(a) paragraphs 101(4)(a), 105(4)(a) and 115(4)(a) (definition of ***actual civilian earnings***); and
(b) paragraph (a) of the definition of ***actual earnings*** in subsection 132(1).

In addition, the Commission may have regard to any other matter it considers relevant.

(2) If the person is working in suitable work, the Commission must have regard to the weekly amount that the person is earning in that work.

(3) If any of the following applies after the person becomes incapacitated for work, the Commission must have regard to the matters set out in subsection (4):
(a) the person fails to accept an offer of suitable work that is made to the person;
(b) an offer of suitable work is made to the person and accepted but the person fails to begin, or fails to continue, the work;
(c) an offer of suitable work is made to the person on the condition that the person complete a reasonable rehabilitation or vocational retraining program but the person fails to do so.

(4) If subsection (3) applies, the Commission must have regard to:
(a) the weekly amount that the person would be earning in that work if the person had not failed as described in subsection (3); and

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(b) whether that failure was reasonable in all the circumstances.

(5) If the person has failed to seek suitable work after becoming incapacitated for work, the Commission must have regard to:
(a) the weekly amount that the person could reasonably be expected to earn in suitable work, having regard to the state of the labour market at the relevant time; and
(b) whether that failure was reasonable in all the circumstances.

182 Indexation of pre-CFTS pay and civilian daily earnings

(1) The regulations may specify:
(a) an index for the purposes of this section; and
(b) the manner of working out an increase in the amount of a person's pre-CFTS pay or civilian daily earnings (as the case requires) by reference to the movement of that index over the year ending each 31 December.

(2) The amount of a person's pre-CFTS pay or civilian daily earnings, for an indexation year in which there is an increase in the prescribed index, is increased in the manner prescribed by the regulations.

(3) In this section:

civilian daily earnings means the amount worked out under the following provisions:
(a) subsections 98(2) and (3);
(b) subsections 156(2) and (3).

pre-CFTS pay means the amount worked out under the following provisions:
(a) section 112;
(b) section 147;
(c) section 171.

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183 Indexation of $100 in ADF pay

(1) The regulations may specify:

(a) an index for the purposes of this section; and

(b) the manner of working out an increase in the amount of $100 mentioned in subsections 104(1), 109(1), 141(1), 144(1), 164(1) and 168(1) by reference to the movement of that index over the year ending each 31 December.

(2) The amount of $100, for an indexation year in which there is an increase in the prescribed index, is increased in the manner prescribed by the regulations.

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Division 3—Adjusting ADF pay and pay-related allowances

184 Simplified outline of this Division

This Division adjusts the amount of a person's normal earnings worked out under Part 3 or 4 if the normal earnings relate to ADF pay.

The normal earnings are adjusted in the following situations:

(a) if a person's pay would increase (because of an increment increase, a pay rise or a promotion);

(b) if a pay-related allowance, or the category of defence work that is used to determine the person's normal earnings, is abolished;

(c) if the person is injured during initial training.

Once a person's normal earnings have been worked out under Part 3 or 4, the earnings can only be adjusted under this Division.

185 Increases in pay and allowances

(1) This section applies for the purposes of the following sections:

(a) section 91;
(b) section 96;
(c) section 104;
(d) section 109;
(e) section 114;
(f) section 141;
(g) section 144;
(h) section 149;
(i) section 154;
(j) section 161;

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(k) section 164;
(l) section 168;
(m) section 173.

(2) The amount of pay that a person would have earned for a period as a member of the Defence Force, and the amount of a pay-related allowance that a person would have been paid for a period, include the following amounts that would have applied for the period:
(a) the amount of any increase in the person's pay by way of an increment in a range of pay;
(b) the amount of any increase in the person's pay or a pay-related allowance as a result of:
(i) the operation of a law of the Commonwealth, a State or a Territory; or
(ii) the making, alteration or operation of a national minimum wage order (within the meaning given by the *Fair Work Act 2009*), or an award, order, determination or industrial agreement, or the doing of any other act or thing, under such a law.

186 Increases in pay and allowances due to actual promotions

(1) This section applies for the purposes of sections 91, 96, 114 and 149 if a person is promoted.

(2) The amount of pay that the person would have earned for a period as a member of the Defence Force, and the amount of a pay-related allowance that the person would have been paid for a period, include:
(a) the amount of any actual increase in the person's pay or a pay-related allowance; or
(b) the amount of an additional pay-related allowance the person would be paid;
for the period because the person is promoted.

Note: A person must actually be promoted in order to receive an increase under this subsection.

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187 Commission must determine category of defence work when defence work abolished

(1) This section applies for the purposes of sections 104, 109, 114, 141, 144, 149, 154, 161, 164, 168 and 173 if the category of defence work that is used to determine a person's normal earnings ceases to exist.

Note: For example, the category of defence work that is used to determine the normal earnings of a person to whom section 104 applies is the category of defence work that the person was engaged in immediately before completing his or her last period of full-time service.

(2) The Commission must determine which of the current categories of defence work should be used to determine a person's normal earnings instead.

(3) The amount of pay that the person would have earned for a period is the amount that the person would have earned for the period if the person performed the category of defence work determined under subsection (2).

Note: The amount of pay mentioned in subsection (3) might include increases mentioned in section 185.

188 Commission may determine pay-related allowances when defence work abolished

(1) This section applies for the purposes of sections 91, 96, 104, 109, 114, 141, 144, 149, 154, 161, 164, 168 and 173 if a person's compensable pay-related allowance (the ***old allowance***) ceases to exist before the allowance's cessation date.

Note: Subsection (6) defines ***cessation date*** and ***compensable pay-related allowance***.

(2) The Commission may determine which of the current pay-related allowances (if any) the person would have been paid instead.

(3) The amount of the old allowance that the person would have been paid for a period is the amount (if any) for the period of the pay-related allowance determined under subsection (2).

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Note: The amount of the pay-related allowance mentioned in subsection (3) might include increases mentioned in section 185.

(4) The pay-related allowance determined under subsection (2) is taken to be a compensable pay-related allowance.

(5) The cessation date for the new allowance is taken to be the old allowance's cessation date.

(6) In this section:

cessation date for a person's pay-related allowance means the date advised by the Chief of the Defence Force under the following provisions (as the case requires):

(a) subsection 91(4);
(b) subsection 96(2);
(c) subsection 104(4);
(d) subsection 109(4);
(e) subsection 114(2);
(f) subsection 141(4);
(g) subsection 144(4);
(h) subsection 149(2);
(i) subsection 154(2);
(j) subsection 161(2);
(k) subsection 164(4);
(l) subsection 168(4);
(m) subsection 173(2).

compensable pay-related allowance has the meaning given by the following provisions (as the case requires):

(a) subsection 91(5);
(b) subsection 96(3);
(c) subsection 104(5);
(d) subsection 109(5);
(e) subsection 114(4);
(f) subsection 141(5);
(g) subsection 144(5);

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(h) subsection 149(4);
(i) subsection 154(3);
(j) subsection 161(3);
(k) subsection 164(5);
(l) subsection 168(5);
(m) subsection 173(4).

189 Amount of pay and allowances for those undergoing initial training

(1) This section applies for the purposes of sections 91, 96, 104, 109, 141, 144, 154, 161, 164 and 168:
  (a) in respect of a person who was undergoing initial training immediately before:
    (ia) if section 91 or 96 applies—the onset date for the person's incapacity for service; and
    (i) if section 104, 109, 164 or 168 applies—completing his or her last period of full-time service; and
    (ii) if section 141, 144, 154 or 161 applies—last ceasing to be a member of the Defence Force; and
  (b) for each week that occurs after the person would have completed the initial training if the person had completed the training.

(2) The amount of pay that the person would have earned, and the amount of pay-related allowances that the person would have been paid, for each such week is the amount advised under subsection (3).

Note: An amount advised under this section might later include increases mentioned in section 185.

(3) The Chief of the Defence Force must advise the Commission in writing of the following:
  (a) the rank that the Chief of the Defence Force considers the person would have held after completing the initial training;

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(b) the amount of pay for a week for that rank that the Chief of the Defence Force considers the person would have earned as a member of the Defence Force after completing the training;

(c) any pay-related allowance that the Chief of the Defence Force considers the person would have been paid after completing the training;

(d) the amount of that pay-related allowance for a week that the Chief of the Defence Force considers the person would have been paid after completing the training.

190 No other adjustments to be taken into account

The only adjustments of the amount of a person's pay or a pay-related allowance to be taken into account in determining the person's normal earnings are the adjustments mentioned in this Division.

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Division 4—Adjusting other pay

191 Simplified outline of this Division

This Division adjusts the amount of a person's civilian daily earnings or pre-CFTS pay if:

(a) the amount is varied during the example period; or

(b) it is impracticable to work it out for the person.

192 Definitions of *civilian daily earnings*, *example period* and *pre-CFTS pay*

In this Division:

civilian daily earnings has the meaning given by section 98 or 156 (as the case requires).

example period has the meaning given by section 99, 113, 148, 157 or 172 (as the case requires).

pre-CFTS pay has the meaning given by section 112, 147 or 171 (as the case requires).

193 Variations during the example period

(1) This section applies for the purposes of sections 98, 112, 147, 156 and 171 if a person's civilian daily earnings or pre-CFTS pay varies during the example period.

(2) If the variation occurs as a result of:

(a) the operation of a law of the Commonwealth, a State or a Territory; or

(b) the making, alteration or operation of a national minimum wage order (within the meaning given by the *Fair Work Act 2009*), or an award, order, determination or industrial

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agreement, or the doing of any other act or thing, under such a law;

then the amount of the civilian daily earnings or pre-CFTS pay for the person is instead the amount that would have been his or her civilian daily earnings or pre-CFTS pay if the variation had taken effect at the beginning of the example period.

194 Civilian daily earnings or pre-CFTS pay if working them out is impracticable

(1) This section applies for the purposes of sections 98, 112, 147, 156 and 171 if it is impracticable to work out the civilian daily earnings or pre-CFTS pay for a person.

(2) The civilian daily earnings or pre-CFTS pay for a person before the relevant date is the civilian daily earnings or pre-CFTS pay before that date of another person performing comparable work.

(3) In this section:

relevant date for a person means:

(a) if section 98 applies—the onset date for the person's incapacity; and

(b) if section 156 applies—the date the person last ceased to be a member of the Defence Force; and

(c) if section 112, 147 or 171 applies—the date the person began his or her last period of continuous full-time service.

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Division 5—Working out compensation for parts of weeks

195 Simplified outline of this Division

This Division sets out how to work out the amount of compensation the Commonwealth is liable to pay under Part 3 or 4 of this Chapter if a person is only entitled to compensation for part of a week and not a whole week.

196 Working out compensation for parts of weeks

(1) The Commonwealth is liable to pay compensation under section 85, 86, 87 or 118 for a part of a week rather than a whole week if a person satisfies subsection 85(1), 86(1), 87(1) or 118(1) for the part of the week.

(2) The following formula sets out how to work out the amount of compensation that the Commonwealth is liable to pay to a person for a part of a week rather than a whole week:

$$\frac{\text{Number of days in the part of the week}}{\text{Number of days}} \times \text{Amount of compensation that the Commonwealth would be liable to pay to the person if the Commonwealth were liable to pay compensation for the whole week}$$

(3) In this section:

number of days means:

(a) if the person is entitled to compensation under section 118 and Division 6 of Part 4 applies to the person—7; and

(b) if the person is entitled to compensation under section 87—the number of days prescribed by the regulations in respect of the person; and

(c) otherwise:

(i) 5; or

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(ii) if the Commission determines another number as the number of days that the person would normally work in the part of the week—that other number.

Note 1: Division 6 of Part 4 applies to former part-time Reservists who are incapacitated for work but who did not engage in civilian work before last ceasing to be a member of the Defence Force.

Note 2: Section 87 applies to incapacitated cadets and declared members.

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Part 6—Choice to receive a Special Rate Disability Pension

197 Simplified outline of this Part

This Part provides a choice for severely impaired people (at least 50 impairment points) who are unable to work more than 10 hours per week to receive a pension under this Part instead of compensation worked out under Division 2 of Part 4.

The rate of the pension is the same as the rate applicable under section 24 of the VEA. However, the rate may be reduced for a recipient who receives an amount under Part 2 (permanent impairment) or who receives or has received a benefit under a Commonwealth superannuation scheme.

A person who works more than 10 hours per week stops receiving the Special Rate Disability Pension. However, the person might still be eligible for assistance under the Return to Work Scheme determined by the Commission under section 210, or compensation worked out under Division 2 of Part 4.

198 What is a *Special Rate Disability Pension*?

(1) A ***Special Rate Disability Pension*** is an ongoing weekly payment (other than a payment under the Return to Work Scheme in section 210) that can be paid to certain persons instead of compensation worked out under Division 2 of Part 4.

(2) The maximum weekly amount of a Special Rate Disability Pension is one half of the fortnightly rate at which a pension is payable from time to time under section 24 of the VEA.

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199 Persons who are eligible to make a choice under this Part

(1) A person is eligible to make a choice under this Part if the Commission is satisfied that the person meets the following criteria (the ***eligibility criteria***):

(a) at least one of the following applies:

(i) the person is receiving compensation worked out under Division 2 of Part 4 as a result of one or more service injuries or diseases;

(ii) the amount, under section 126, of the person's compensation for a week, as a result of one or more service injuries or diseases, is nil or a negative amount;

(iii) the person has been paid a lump sum under section 138 in respect of the person's incapacity for work as a result of one or more service injuries or diseases;

(b) as a result of the injuries or diseases, the person has suffered an impairment that is likely to continue indefinitely;

(ba) either:

(i) the person is not pension age or older; or

(ii) the person is pension age or older but section 121 applies to the person;

(c) the Commission has determined under Part 2 that the person's impairment constitutes at least 50 impairment points;

(d) the person is unable to undertake remunerative work for more than 10 hours per week, and rehabilitation is unlikely to increase the person's capacity to undertake remunerative work.

(2) The Commission must, as soon as practicable after becoming satisfied that a person meets the eligibility criteria, make the person a written offer of a choice under this Part. The offer must specify the date on which the offer is made.

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200 Choice to receive Special Rate Disability Pension

(1) A person who is offered the choice under this Division can choose to receive a Special Rate Disability Pension instead of compensation worked out under Division 2 of Part 4.

(2) A person who makes the choice cannot change it.

(3) However, a person to whom the Commonwealth is no longer liable to pay a Special Rate Disability Pension under section 209 is taken not to have chosen to receive the Pension.

Note: This means that the person might still be entitled to compensation worked out under Division 2 of Part 4 or under the Return to Work Scheme in section 210.

201 When the choice is to be made

(1) A person who is offered the choice under this Part and who wishes to make the choice must do so within 12 months after the date on which the offer was made.

(2) The Commission may, either before or after the end of that period, extend the period within which the person must make the choice if the Commission is satisfied that:

(a) there was a delay in the person receiving the offer under subsection 199(2); or

(b) the person did not receive the offer.

202 Other requirements for the choice

(1) The Commission may, in writing, approve a form for the purposes of this section.

(2) A person must make the choice in writing in accordance with the form.

(3) Before making the choice, the person must obtain financial advice from a suitably qualified financial adviser in respect of the choice.

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Note: The person might be entitled to compensation for the cost of the financial advice under section 205.

203 Determinations by Commission

(1) The Commission must determine that the Commonwealth is liable to pay a Special Rate Disability Pension to a person instead of compensation worked out under Division 2 of Part 4 if:

(a) the person is offered the choice under this Part; and

(b) the person makes the choice to receive the pension within the period applicable under section 201 and in accordance with section 202; and

(c) the Commission is satisfied that the person meets the eligibility criteria on the day on which the person makes the choice.

(2) The Commission must determine that a person is to continue to receive compensation worked out under Division 2 of Part 4 if:

(a) the person is offered a choice under this Part; and

(b) either:

(i) the person does not make the choice within the period applicable under section 201 and in accordance with section 202; or

(ii) the Commission is satisfied that the person does not meet the eligibility criteria on the day on which the person makes the choice.

(3) If the Commission makes a determination under subsection (1) in relation to a person, a Special Rate Disability Pension is payable to the person instead of compensation worked out under Division 2 of Part 4 from the day on which the Commission becomes aware of the person's choice.

204 Offsets

(1) The maximum weekly amount of a Special Rate Disability Pension that could be payable to a person is reduced in accordance with this section.

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Permanent impairment compensation

(2) There is a reduction that is made by reference to amounts payable or paid to the person under Part 2 (permanent impairment). However, a payment received for eligible young persons, financial advice, legal advice or energy supplement under that Part does not reduce the maximum weekly amount of Special Rate Disability Pension that could be payable to the person.

(3) The maximum weekly amount of a Special Rate Disability Pension that could be payable to a person is reduced by the sum of:
  (a) any weekly amounts that are being paid to the person under Part 2; and
  (b) if the person has chosen to convert all or part of one or more weekly amounts that were payable to the person under that Part to lump sums—those weekly amounts or those parts of those weekly amounts.

(4) Subsection (3) applies to a person to whom section 389 or 402 applies as if the person were being paid the weekly amounts under Part 2 that the person would be paid if that section did not apply to the person.

Note: Section 389 provides that compensation under Part 2 is not payable to a person who chooses to institute proceedings for damages against the Commonwealth. Under section 402, compensation under this Act is not payable to a person who recovers damages from a third party.

Commonwealth superannuation

(5) There is a reduction if the person:
  (a) has retired voluntarily, or has been compulsorily retired, from his or her work; and
  (b) receives either or both a pension or lump sum under a Commonwealth superannuation scheme as a result of the retirement.

(6) The amount of the reduction under subsection (5) is 60% of the reduction that would apply to the person under section 134, 135 or

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136 if the person were receiving compensation worked out under Division 2 of Part 4.

Relationship with subsection 415(4)

(7) This section does not limit the application of subsection 415(4) in relation to a Special Rate Disability Pension.

Note: Subsection (7) has the effect that if the maximum weekly amount of a Special Rate Disability Pension is reduced in accordance with this section, that amount may be further reduced in accordance with subsection 415(4).

204A Overpayment if payment of lump sum under section 138

(1) This section applies if the Commission makes a determination under subsection 203(1) in relation to a person where subparagraph 199(1)(a)(iii) applies.

(2) An amount, equal to so much of the lump sum under section 138 as is worked out in accordance with a legislative instrument made by the Commission under this subsection, is taken to be an amount of compensation that should not have been paid to the person.

Note 1: Section 415 allows the Commission to recover that amount as a debt due to the Commonwealth and allows that amount to be deducted from an amount that is payable under this Act.

Note 2: Section 1228 of the *Social Security Act 1991* provides that amount is recoverable under that Act by means of deductions from payments under that Act.

Note 3: Section 205 of the VEA provides that amount is recoverable under that Act by means of deductions from payments under that Act.

205 Compensation for cost of financial advice and legal advice

Financial advice

(1) The Commonwealth is liable to pay compensation for the cost of financial advice obtained by a person if:

(a) the person obtains financial advice from a suitably qualified financial adviser as mentioned in subsection 202(3); and

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(b) a claim for compensation in respect of the person has been made under section 319.

Legal advice

(2) The Commonwealth is liable to pay compensation for the cost of legal advice obtained by a person if:
(a) the legal advice was obtained from a practising lawyer; and
(b) the legal advice was obtained in respect of the choice the person may make under this Part; and
(c) a claim for compensation in respect of the person has been made under section 319.

206 Amount of financial advice and legal advice compensation

Financial advice

(1) The Commission must determine the amount of compensation under subsection 205(1) for the cost of the financial advice that it considers reasonable.

Legal advice

(2) The Commission must determine the amount of compensation under subsection 205(2) for the cost of the legal advice that it considers reasonable.

Limit

(3) The sum of the total amount of compensation under subsections 205(1) and (2) in respect of the person must not exceed $2,400.

Note: The amount of $2,400 is indexed under section 404.

(4) The amount of $2,400 applies both to financial advice and legal advice under this Part and financial advice and legal advice under Part 2 if the day on which the offer under this Part was made, and the day specified in the first notice given to the person under section 76, are the same.

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207 Whom the compensation is payable to

(1) Compensation under section 205 for the cost of financial advice or legal advice is payable to:

(a) the person who made the claim for compensation; or

(b) if that person so directs:

(i) the person who gave the advice; or

(ii) any other person who incurred the cost of the advice.

Note: A special rule applies if there is a trustee under section 432.

(2) An amount paid to the person who gave the advice discharges any liability of any other person for the cost of the advice to the extent of the payment.

208 Persons who are imprisoned

The Commonwealth is not liable to pay a Special Rate Disability Pension to a person for any period during which the person is imprisoned in connection with his or her conviction of an offence.

209 Ceasing to meet certain criteria

The Commonwealth is no longer liable to pay a Special Rate Disability Pension to a person if the Commission is satisfied that:

(a) the person's impairment as a result of all of the service injuries or diseases from which the person suffers constitutes fewer than 50 impairment points; or

(b) the person is able to undertake remunerative work for more than 10 hours per week.

209A Energy supplement for Special Rate Disability Pension

(1) The Commonwealth is liable to pay an energy supplement to a person for a day if:

(a) Special Rate Disability Pension:

(i) is payable to the person for the day; or

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(ii) would be payable to the person for the day apart from section 204 and paragraph 398(3)(b); and

(b) the person resides in Australia on the day; and

(c) on the day the person either:

(i) is in Australia; or

(ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

Note: Section 424L may affect the person's entitlement to the energy supplement.

(2) The daily rate of the supplement is 1/7 of $10.75.

210 Return to work scheme

(1) The Commission may determine, in writing, a scheme, called the Return to Work Scheme, under which the Commonwealth is liable to pay compensation of a kind mentioned in subsection (2) to a person in circumstances identified in the Return to Work Scheme if:

(a) the person:

(i) was receiving a Special Rate Disability Pension; and

(ii) becomes able to undertake remunerative work for more than 10 hours per week; and

(b) a claim for compensation in respect of the person has been made under section 319.

Note: The person would no longer be entitled to Special Rate Disability Pension because of paragraph 209(b).

(2) The compensation is a weekly payment of an amount:

(a) worked out under the Return to Work Scheme; and

(b) worked out, at least in part, by reference to the number of hours per week of remunerative work that the person is able to undertake.

(3) The Commission may, from time to time, repeal or amend the Return to Work Scheme in writing.

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(4) The Return to Work Scheme, and any repeal or amendment of the Return to Work Scheme, is a legislative instrument.

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Part 7—Other types of compensation for members and former members

Division 1—Simplified outline of this Part

211 Simplified outline of this Part

This Part provides other types of compensation and other benefits for current and former members who have suffered a service injury or disease or have been awarded certain decorations in respect of service rendered.

A person who, because of an impairment resulting from a service injury or disease, has special requirements for his or her car can obtain compensation under Division 2.

Compensation is provided under Division 3 for household and attendant care services that are required because of a service injury or disease.

An Additional Disablement Amount is provided under Division 3A for certain persons who are pension age or older and have suffered a serious impairment as a result of a service injury or disease.

MRCA supplement is provided under Division 4.

Compensation for loss or damage to a member's medical aid might be provided under Division 5 (but only if the member has not claimed compensation for a related service injury or disease).

Victoria Cross allowance is provided under Division 6 for persons who have been awarded the Victoria Cross or the Victoria Cross for Australia.

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Division 7 allows the Minister to make a legislative instrument that provides for the payment of decoration allowance.

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Division 2—Motor Vehicle Compensation Scheme

212 Motor Vehicle Compensation Scheme

(1) The Commission may determine, in writing, a scheme, called the Motor Vehicle Compensation Scheme (the ***MVCS***), under which the Commonwealth is liable to provide compensation of a kind mentioned in subsection (2) to a person in circumstances identified in the MVCS if:

(a) the person has suffered an impairment as a result of a service injury or disease for which the Commission has accepted liability; and

(b) because of that impairment, the person has a need for compensation of that kind; and

(ba) the person is not participating in the Vehicle Assistance Scheme under the VEA; and

(c) a claim for compensation in respect of the person has been made under section 319.

Note: The Commission is taken to have accepted liability for an injury or disease in certain circumstances (see section 24A).

(2) The kinds of compensation are:

(a) modifying a motor vehicle for a person; and

(b) maintaining or repairing modifications to a motor vehicle; and

(c) subsidising the purchase of a motor vehicle by a person; and

(d) purchasing a motor vehicle for a person; and

(e) other kinds of compensation relating to motor vehicles specified in the MVCS.

(3) The Commission may, from time to time, repeal or amend the MVCS in writing.

(4) The MVCS, and any repeal or amendment of the MVCS, is a legislative instrument.

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(5) The Commonwealth is only liable to pay compensation under the MVCS in respect of an aggravated injury or disease if it is because of the aggravation or material contribution (whether wholly or partly) that the person suffered the impairment.

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Division 3—Compensation for household and attendant care services

213 Definitions

(1) In this Division:

attendant care services for a person means services (other than household services, medical or surgical services or nursing care) that are required for the essential and regular personal care of the person.

catastrophic injury or disease means an injury, or a disease, where the conditions determined in an instrument under subsection (2) are satisfied.

household services for a person means services of a domestic nature (including cooking, house cleaning, laundry and gardening services) that are required for the proper running and maintenance of the person's household.

(2) The Commission may, by legislative instrument, determine conditions for the purposes of the definition of ***catastrophic injury or disease*** in subsection (1).

214 Compensation for household services

(1) The Commonwealth is liable to pay weekly compensation for household services provided to a person if:

(a) the Commission has accepted liability for a service injury or disease of the person; and

(b) the person obtains household services that he or she reasonably requires because of the injury or disease; and

(c) a claim for compensation in respect of the person has been made under section 319.

Note: The Commission is taken to have accepted liability for an injury or disease in certain circumstances (see section 24A).

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(2) However, the Commonwealth is only liable to pay compensation in respect of an aggravated injury or disease if it is because of the aggravation or material contribution (whether wholly or partly) that the person reasonably requires the household services.

215 Matters to be considered in household services compensation claims

In determining whether household services are reasonably required for a person, the Commission must have regard to the following matters:

(a) the extent to which household services were provided by the person before the service injury or disease;

(b) the extent to which he or she is able to provide those services after the service injury or disease;

(c) the number of other persons (***household members***) living with that person as members of his or her household;

(d) the age of the household members and their need for household services;

(e) the extent to which household services were provided by household members before the service injury or disease;

(f) the extent to which household members, or any other relatives of the person, might reasonably be expected to provide household services for themselves and for the person after the service injury or disease;

(g) the need to avoid substantial disruption to the work or other activities of the household members;

(h) any other matter that the Commission considers relevant.

216 Amount of household compensation

(1) Subject to subsection (2), the weekly amount of compensation under section 214 that the Commonwealth is liable to pay for household services is the lesser of the following amounts:

(a) the weekly amount paid or payable for those services;

(b) $330.

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Note: The amount of $330 is indexed under section 404.

(2) If the service injury or disease referred to in paragraph 214(1)(a) is a catastrophic injury or disease, the weekly amount of compensation under section 214 that the Commonwealth is liable to pay for household services is such amount as the Commission determines to be reasonable in the circumstances.

217 Compensation for attendant care services

(1) The Commonwealth is liable to pay weekly compensation for attendant care services provided to a person if:

(a) the Commission has accepted liability for a service injury or disease of the person; and

(b) the person obtains attendant care services that he or she reasonably requires because of the injury or disease; and

(c) a claim for compensation in respect of the person has been made under section 319.

Note: The Commission is taken to have accepted liability for an injury or disease in certain circumstances (see section 24A).

(2) However, the Commonwealth is only liable to pay compensation in respect of an aggravated injury or disease if it is because of the aggravation or material contribution (whether wholly or partly) that the person reasonably requires the attendant care services.

218 Matters to be considered in attendant care compensation claims

In determining whether attendant care services are reasonably required for a person, the Commission must have regard to the following matters:

(a) the nature of the person's injury or disease;

(b) the degree to which that injury or disease impairs the person's ability to provide for his or her personal care;

(c) the extent to which any medical service or nursing care received by the person provides for his or her essential and regular personal care;

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(d) the extent to which the attendant care services are necessary to meet any reasonable wish by the person to live outside an institution;
(e) the extent to which attendant care services are necessary to enable the person to undertake or continue defence service or any other work;
(f) any assessment made in relation to the rehabilitation of the person;
(g) the extent to which a relative of the person might reasonably be expected to provide attendant care services;
(h) any other matter that the Commission considers relevant.

219 Amount of compensation for attendant care services

(1) Subject to subsection (2), the weekly amount of compensation under section 217 that the Commonwealth is liable to pay for attendant care services is the lesser of the following amounts:
(a) the weekly amount paid or payable for those services;
(b) $330.

Note: The amount of $330 is indexed under section 404.

(2) If the service injury or disease referred to in paragraph 217(1)(a) is a catastrophic injury or disease, the weekly amount of compensation under section 217 that the Commonwealth is liable to pay for attendant care services is such amount as the Commission determines to be reasonable in the circumstances.

220 Whom household and attendant care compensation is payable to

(1) Compensation under section 214 or 217 for household services or attendant care services is payable to:
(a) the person who made the claim for compensation; or
(b) if that person so directs:
(i) the person who provided, or will provide, the services; or
(ii) any other person who incurred, or will incur, the cost of the services.

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Note: A special rule applies if there is a trustee under section 432.

(2) A payment under section 214 or 217 to a person who provided, or will provide, the services discharges any liability of any other person for the cost of the services to the extent of the payment.

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Division 3A—Additional Disablement Amount

220A Eligibility for Additional Disablement Amount

The Commonwealth is liable to pay an Additional Disablement Amount to a person if:

(a) the Commission has accepted liability for one or more service injuries or diseases of the person; and

(b) the person is not receiving any of the following:

(i) compensation for incapacity under Part 3 or 4 of this Chapter;

(ii) a Special Rate Disability Pension;

(iii) a pension under Part II or IV of the VEA as a veteran to whom subsection 22(4), or section 23, 24 or 25, of that Act applies; and

(c) the person is pension age or older; and

(d) the Commission has determined under Part 2 of this Chapter that an impairment suffered by the person as a result of one or more service injuries or diseases constitutes 70 or more impairment points and the effect of the injuries or diseases on the person's lifestyle constitutes 6 or more impairment points.

Note: The Commission is taken to have accepted liability for an injury or disease in certain circumstances (see section 24A).

220B Amount of Additional Disablement Amount

The maximum weekly amount of Additional Disablement Amount that is payable under section 220A is one half of the fortnightly rate at which a pension is payable from time to time under subsection 22(4) of the VEA.

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220C Offsets

(1) The maximum weekly amount of Additional Disablement Amount that could be payable to a person is reduced in accordance with this section.

Permanent impairment compensation

(2) There is a reduction that is made by reference to amounts payable or paid to the person under Part 2 of this Chapter (permanent impairment). However, a payment received for eligible young persons, financial advice, legal advice or energy supplement under that Part does not reduce the maximum weekly amount of Additional Disablement Amount that could be payable to the person.

(3) The maximum weekly amount of an Additional Disablement Amount that could be payable to a person is reduced by the sum of:
  (a) any weekly amounts that are being paid to the person under Part 2 of this Chapter; and
  (b) if the person has chosen to convert all or part of one or more weekly amounts that were payable to the person under that Part to lump sums—those weekly amounts or those parts of those weekly amounts.

(4) Subsection (3) applies to a person to whom section 389 or 402 applies as if the person were being paid the weekly amounts under Part 2 of this Chapter that the person would be paid if that section did not apply to the person.

Note: Section 389 provides that compensation under Part 2 of Chapter 4 is not payable to a person who chooses to institute proceedings for damages against the Commonwealth. Under section 402, compensation under this Act is not payable to a person who recovers damages from a third party.

Commonwealth superannuation

(5) There is a reduction if the person:

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(a) has retired voluntarily, or has been compulsorily retired, from the person's work; and

(b) receives either or both a pension or lump sum under a Commonwealth superannuation scheme as a result of the retirement.

(6) The amount of the reduction under subsection (5) is 60% of the reduction that would apply to the person under section 134, 135 or 136 if the person were receiving compensation worked out under Division 2 of Part 4 of this Chapter.

Relationship with subsection 415(4)

(7) This section does not limit the application of subsection 415(4) in relation to an Additional Disablement Amount.

Note: Subsection (7) has the effect that if the maximum weekly amount of an Additional Disablement Amount is reduced in accordance with this section, that amount may be further reduced in accordance with subsection 415(4).

220D Energy supplement for Additional Disablement Amount

(1) The Commonwealth is liable to pay an energy supplement to a person for a day if:

(a) an Additional Disablement Amount:

(i) is payable to the person for the day; or

(ii) would be payable to the person for the day apart from section 220C and paragraph 398(3)(b); and

(b) the person resides in Australia on the day; and

(c) on the day the person either:

(i) is in Australia; or

(ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

Note: Section 424L may affect the person's entitlement to the energy supplement.

(2) The daily rate of the supplement is $^{1}/_{7}$ of $10.75.

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Division 4—MRCA supplement for members and former members

221 Eligibility for MRCA supplement

Persons eligible for Special Rate Disability Pension

(1) A person is eligible for MRCA supplement under this section if:
   (a) the person satisfies the eligibility criteria in section 199 (persons who are eligible for Special Rate Disability Pension), or has satisfied those criteria during some period of his or her life; and
   (b) the person is an Australian resident (within the meaning of section 5G of the VEA).

Note: Section 222 sets out some circumstances in which MRCA supplement is not payable.

Persons with 80 or more impairment points

(2) A person is eligible for MRCA supplement under this section if:
   (a) the Commission has determined under Part 2 that an impairment suffered by the person as a result of one or more service injuries or diseases constitutes 80 or more impairment points; and
   (b) the person is an Australian resident (within the meaning of section 5G of the VEA).

Note: Section 222 sets out some circumstances in which MRCA supplement is not payable.

222 MRCA supplement not payable in some circumstances

Persons leaving Australia otherwise than temporarily

(1) A person who leaves Australia otherwise than temporarily is not eligible for MRCA supplement under section 221 after the day on which he or she left Australia.

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Temporary absence from Australia

(2) A person who is temporarily absent from Australia and has been so absent for more than 26 weeks is not eligible for MRCA supplement under section 221 after the first 26 weeks of the absence.

When a person becomes eligible for MRCA supplement after leaving Australia

(3) A person mentioned in subsection (1) or (2) again becomes eligible to receive MRCA supplement under section 221 on the later of the following days:
  (a) the day on which the person returns to Australia;
  (b) the day on which the person notifies the Commission of his or her return to Australia.

Persons receiving other payments

(4) Even though a person is eligible for MRCA supplement under subsection 221(2), the supplement is not payable to the person if he or she is receiving MRCA supplement under subsection 221(1).

(5) Even though a person is eligible for MRCA supplement under section 221, the supplement is not payable to the person if he or she is receiving:
  (a) veterans supplement under section 118B of the VEA; or
  (b) a telephone allowance under the *Social Security Act 1991*; or
  (c) MRCA supplement under Division 5 of Part 2 of Chapter 5; or
  (d) energy supplement under Part 2.25B of the *Social Security Act 1991* or Part VIIAD of the VEA; or
  (e) a social security payment (within the meaning of the *Social Security Act 1991*) for which a pension supplement amount (within the meaning of that Act) is used to work out the rate of the payment; or
  (f) a service pension (within the meaning of the VEA); or

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(g) a veteran payment made under an instrument made under section 45SB of the VEA.

223 Rate of MRCA supplement

The rate of MRCA supplement that is payable under section 221 is the rate of veterans supplement that is payable from time to time under section 118D of the VEA.

224 Payment of MRCA supplement

MRCA supplement generally payable fortnightly

(1) Unless a determination under subsection (2) is in force in relation to the person, a person's MRCA supplement under section 221 is payable on each pension payday (within the meaning of subsection 5Q(1) of the VEA) on which:
(a) the person is eligible for the MRCA supplement; and
(b) the MRCA supplement is payable to the person.

Note: If there is a trustee under section 432, then the MRCA supplement would be payable to the trustee.

MRCA supplement may be payable weekly

(2) The Commission may determine, in writing, that a person's MRCA supplement under section 221 is payable in 2 payments (the ***part payments***) if the person is a member of a class specified under subsection (4).

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

(4) The Commission may, by legislative instrument, specify a class of persons for the purposes of subsection (2).

(5) The first of the part payments:
(a) is an amount equal to one half of the rate of veterans supplement that is payable from time to time under section 118D of the VEA; and

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(b) is payable on each Thursday that is not a pension payday (within the meaning of subsection 5Q(1) of that Act) on which:

(i) the person is eligible for the MRCA supplement; and

(ii) the MRCA supplement is payable to the person.

Note: If there is a trustee under section 432, then the MRCA supplement would be payable to the trustee.

(6) The other of the part payments:

(a) is an amount equal to one half of the rate of veterans supplement that is payable from time to time under section 118D of the VEA; and

(b) is payable 7 days after the first of the part payments is payable to the person.

Note: If there is a trustee under section 432, then the MRCA supplement would be payable to the trustee.

(7) If a person's MRCA supplement under section 221 is payable in part payments, it is taken for the purposes of this Act that:

(a) a single supplement is payable on each pension payday (within the meaning of subsection 5Q(1) of the VEA); and

(b) that supplement is payable when the last of the part payments is, or is to be, made; and

(c) the amount of that supplement is equal to the total of the part payments.

(8) However, sections 426 and 431 (about deductions of amounts) apply as if each of the part payments were a separate supplement.

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Division 5—Compensation for loss of, or damage to, medical aids

226 Compensation for loss of, or damage to, medical aids

(1) The Commonwealth is liable to pay compensation for the loss of, or damage to, a member's medical aid if:

(a) the loss or damage results from an occurrence that happened while the member was rendering defence service; and

(b) the loss or damage requires the medical aid to be repaired or replaced; and

(c) a claim for acceptance of liability for the loss or damage, and a claim for compensation in respect of the member, has been made under section 319.

Exclusions

(2) However, the Commonwealth is not liable to pay compensation for the loss or damage if:

(a) a claim for the Commission to accept liability for a service injury, disease or death resulting from the occurrence has been made under section 319; or

(b) one or more of the exclusions in sections 227 and 228 applies in respect of the loss or damage, or in respect of the occurrence that resulted in the loss or damage.

(3) The Commonwealth is not liable to pay compensation for the loss or damage to the extent that the medical aid is repaired or replaced by the Commonwealth (other than under this section).

227 Exclusions relating to serious defaults etc.

(1) The Commonwealth is not liable to pay compensation for the loss of, or damage to, a member's medical aid if:

(a) the occurrence that results in the loss or damage:

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(i) resulted from the member's serious default or wilful act; or

(ii) happened while the member was committing a serious breach of discipline; or

(iii) resulted from reasonable and appropriate counselling in relation to the member's performance as a member; or

(b) the loss or damage was intentionally caused by the member.

(2) For the purpose of subparagraph (1)(a)(i), an occurrence is taken to have resulted from a member's serious default or wilful act if:

(a) the member consumed alcohol or took a drug (other than a drug administered by a person legally authorised to administer the drug or a drug legally obtained and taken in accordance with the directions provided with the drug); and

(b) the occurrence resulted from the member being under the influence of the alcohol or drug.

This subsection does not otherwise limit subparagraph (1)(a)(i).

228 Exclusions relating to travel

Substantial delay commencing journey

(1) The Commonwealth is not liable to pay compensation for the loss of, or damage to, a member's medical aid that resulted from an accident that occurred while the member was travelling on a journey from the member's place of duty if the member delayed commencing the journey for a substantial time after he or she ceased to perform duty at that place, unless:

(a) the delay was for a reason connected with the performance of the member's duties; or

(b) in the circumstances of the particular case:

(i) the nature of the risk of having the accident was not substantially changed; and

(ii) the extent of that risk was not substantially increased;

by that delay or by anything that happened during that delay.

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Routes that are not reasonably direct

(2) The Commonwealth is not liable to pay compensation for the loss of, or damage to, a member's medical aid that resulted from an accident that occurred while the member was travelling on a journey, or a part of a journey, by a route that was not reasonably direct having regard to the means of transport used, unless:

(a) the journey, or that part of the journey, was made by that route for a reason connected with the performance of the member's duties; or

(b) in the circumstances of the particular case:

(i) the nature of the risk of having the accident was not substantially changed; and

(ii) the extent of that risk was not substantially increased;

because the journey, or that part of the journey, was made by that route.

Substantial interruptions to journeys

(3) The Commonwealth is not liable to pay compensation for the loss of, or damage to, a member's medical aid that resulted from an accident that occurred while the member was travelling on a part of a journey made after a substantial interruption of the journey, unless:

(a) the interruption was made for a reason connected with the performance of the member's duties; or

(b) in the circumstances of the particular case:

(i) the nature of the risk of having the accident was not substantially changed; and

(ii) the extent of that risk was not substantially increased;

because of that interruption.

229 Amount of medical aid compensation

The amount of compensation that the Commonwealth is liable to pay under section 226 for the loss of, or damage to, a member's medical aid is the amount reasonably incurred by the member

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(whether paid or payable) in the necessary replacement or repair of the medical aid. This may include any reasonable fees or charges of a practitioner, or other qualified person, for a consultation, examination, prescription, or other service that is reasonably rendered in connection with the replacement or repair.

230 Whom medical aid compensation is payable to

(1) Compensation under section 226 for the loss of, or damage to, a member's medical aid is payable to:

(a) the person who made the claim for compensation; or

(b) if that person so directs:

(i) the person who provided any goods or services in connection with the replacement or repair of the medical aid; or

(ii) any other person who incurred the cost of goods or services in connection with the replacement or repair.

Note: A special rule applies if there is a trustee under section 432.

(2) A payment under section 226 to a person who provided the goods or services discharges any liability of any other person for the cost of the goods or services to the extent of the payment.

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Division 6—Victoria Cross allowance

230A Eligibility for Victoria Cross allowance

(1) The Commonwealth is liable to pay an allowance, called Victoria Cross allowance, to a person in respect of an allowance period if:

(a) before the start of the period, the person has been awarded the Victoria Cross or the Victoria Cross for Australia; and

(b) at the start of the period:

(i) the person is living; and

(ii) the award has not been rescinded.

(2) In this section:

allowance period means the following:

(a) the period of 12 months starting on 20 September 2026;

(b) each subsequent period of 12 months starting on 20 September.

230B Amount of Victoria Cross allowance

The amount of the allowance under section 230A is $5,373.

Note: The amount of $5,373 is indexed under section 404A.

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Division 7—Decoration allowance

230C Decoration allowance

(1) The Minister may, by legislative instrument, make provision for and in relation to the payment of decoration allowance to a person who has been awarded an eligible decoration.

(2) Without limiting subsection (1), an instrument under that subsection may provide for the following:

(a) the circumstances in which the Commonwealth is liable to pay decoration allowance;

(b) the decorations that are eligible decorations;

(c) the amount, or a method for working out the amount, of decoration allowance;

(d) indexation of the amount of decoration allowance;

(e) the persons to whom decoration allowance is payable.

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Chapter 5—Compensation for dependants of certain deceased members, members and former members

Part 1—Simplified outline of this Chapter

231 Simplified outline of this Chapter

This Chapter provides for compensation and other benefits for dependants of certain deceased, current and former members.

Most of the benefits are provided to dependants of deceased members to whom section 12 applies. That section applies to a deceased member who died from a service death or who suffered a serious impairment from a service injury or disease before his or her death.

Part 2 provides compensation for the partners of these members if the partners were wholly dependent on the member before the member's death.

Part 3 provides compensation for the children of these members. Other young people who were dependent on a deceased member before the member's death might also be entitled to compensation.

The Commission can set up a scheme under Part 3 to provide education and training for the children and young dependants of deceased members, as well as for the children and young dependants of some current and former members.

Part 4 provides compensation for other dependants who were wholly or partly dependent on a deceased member to whom section 12 applies.

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Section 231

Part 5 provides compensation in respect of the funeral of certain deceased members and dependants of deceased members.

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Part 2—Compensation for member's death for wholly dependent partners

Division 1—Simplified outline of this Part

232 Simplified outline of this Part

This Part provides compensation for the partners of deceased members in respect of whom section 12 applies if the partner was wholly dependent on the member before his or her death.

Division 2 provides that compensation is payable weekly, but that the partner may choose to convert 25%, 50%, 75% or 100% of the weekly amount to a lump sum. Division 2 also provides additional lump sum compensation for a partner if the deceased member died from a service death.

Division 3 provides compensation for the cost of financial advice and legal advice obtained for a partner who is entitled to compensation under Division 2.

Division 4 provides a partner with a further lump sum if the deceased member received some types of compensation under Chapter 4.

The partner might be entitled to MRCA supplement under Division 5.

A partner who is entitled to compensation under this Chapter might also be entitled to have free treatment, or compensation for treatment, provided under Chapter 6.

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Division 2—Compensation for member's death for wholly dependent partners

233 Compensation for member's death for wholly dependent partners

The Commonwealth is liable to pay compensation for a wholly dependent partner of a deceased member if:

(a) section 12 applies in respect of the member; and

(b) a claim for compensation in respect of the partner has been made under section 319.

234 Amount of compensation for wholly dependent partners

(1) The amount of compensation that the Commonwealth is liable to pay under section 233 is:

(a) if the Commission has accepted liability for the member's death—the amount of the lump sum mentioned in subsection (2); and

(b) in any case—subject to section 236, the weekly amount mentioned in subsection (5) of this section.

Note: Section 236 allows the partner to choose to convert 25%, 50%, 75% or 100% of the weekly amount to a lump sum.

(2) For the purposes of paragraph (1)(a), the amount of the lump sum is the amount worked out using the following formula:

$$\text{Partner's age-based number for the lump sum under paragraph (1)(a)} \times \$100,000$$

Note 1: Subsection (7) defines ***partner's age-based number***.

Note 2: The amount of $100,000 is indexed under section 404.

(5) For the purposes of paragraph (1)(b), the weekly amount is:

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(a) one half of the fortnightly rate at which a pension is payable from time to time under paragraphs 30(1)(a), (b) and (c) of the VEA; and

(b) payable from the date of the member's death until the partner's death.

(7) In this section:

partner's age-based number, in respect of a lump sum under paragraph (1)(a), means the number that is advised by the Australian Government Actuary by reference to the partner's age at the date of the member's death.

235 Notifying the partner

(1) The Commission must give the partner a written notice as soon as practicable:

(b) specifying the weekly amount mentioned in paragraph 234(1)(b) that is currently payable; and

(c) advising the partner that he or she can choose, under section 236, to convert 25%, 50%, 75% or 100% of the weekly amount to a lump sum in accordance with that section; and

(ca) advising the partner of the amount of the lump sum that would be payable to the partner in each of those cases; and

(d) specifying the date on which the notice is given.

(2) The notice may be included in the notice given under section 346.

236 Choice to take lump sum

(1) A partner who receives a notice under section 235 may choose to convert 25%, 50%, 75% or 100% of the weekly amount to a lump sum.

(2) A partner who makes a choice cannot change it.

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(3) The choice must be made in writing and must be given to the Commission within 2 years after the date on which the partner received the notice.

(4) The Commission may, either before or after the end of that period, extend the period within which the choice must be made if it considers there are special circumstances for doing so.

Amount of lump sum

(5) The amount of the lump sum is worked out using the following formula:

$$\left(\text{Partner's age-based number in respect of the lump sum} \times \text{Appropriate percentage of the weekly amount under paragraph 234(1)(b) at the date of the member's death} \right) - \text{Appropriate percentage of the weekly amounts already paid to the partner}$$

where:

appropriate percentage means the percentage chosen by the partner under subsection (1).

partner's age-based number, in respect of a lump sum, means the number that is advised by the Australian Government Actuary by reference to the partner's age at the date of the member's death.

No lump sum for legal personal representative of a deceased partner

(6) The legal personal representative of a deceased partner is not entitled to choose to convert any percentage of the weekly amount that was payable to the deceased partner to a lump sum.

Effect on weekly payment of choosing a lump sum

(7) If a partner who receives a notice under section 235 chooses to convert 100% of the weekly amount to a lump sum, then, as soon

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as practicable after the choice is made, the weekly amount ceases to be payable to the partner.

(8) If a partner who receives a notice under section 235 chooses to convert 25%, 50% or 75% of the weekly amount to a lump sum, then, as soon as practicable after the choice is made, the weekly amount must be reduced accordingly.

238 Whom the compensation is payable to

Compensation under section 233 is payable to the partner.

Note: A special rule applies if there is a trustee under section 432.

238A Energy supplement for compensation for wholly dependent partners of deceased members

(1) The Commonwealth is liable to pay an energy supplement to a person for a day if:
  (a) the condition in subsection (2) is met for the day; and
  (b) the person is residing in Australia on the day; and
  (c) on the day the person either:
    (i) is in Australia; or
    (ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 6 weeks.

Note: Section 424L may affect the person's entitlement to the energy supplement.

Condition—receipt of compensation under this Division

(2) The condition is that either or both of the following apply:
  (a) weekly compensation under this Division (except this section) either:
    (i) is payable to the person for the day; or
    (ii) would be payable to the person for the day apart from paragraph 398(3)(b);

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(b) before the day the person received lump sum compensation under this Division and subsection 388(6) has not applied to the person before the day.

Rate of energy supplement

(3) The daily rate of the supplement is $^{1}/_{7}$ of $7.10.

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Division 3—Compensation for cost of financial advice and legal advice for wholly dependent partners

239 Compensation for cost of financial advice and legal advice

Financial advice

(1) The Commonwealth is liable to pay compensation for the cost of financial advice obtained by a wholly dependent partner of a deceased member if:
  (a) the partner is entitled to compensation under section 233; and
  (b) the financial advice was obtained from a suitably qualified financial adviser after the member's death; and
  (ba) the financial advice was obtained in respect of the choice the partner may make under subsection 236(1); and
  (c) a claim for compensation in respect of the partner has been made under section 319.

Legal advice

(2) The Commonwealth is liable to pay compensation for the cost of legal advice obtained by a wholly dependent partner of a deceased member if:
  (a) the partner is entitled to compensation under section 233; and
  (b) the legal advice was obtained from a practising lawyer after the member's death; and
  (c) the legal advice was obtained in respect of the choice the partner may make under subsection 236(1); and
  (d) a claim for compensation in respect of the partner has been made under section 319.

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240 Amount of financial advice and legal advice compensation

Financial advice

(1) The Commission must determine the amount of compensation under subsection 239(1) for the cost of the financial advice that it considers reasonable.

Legal advice

(2) The Commission must determine the amount of compensation under subsection 239(2) for the cost of the legal advice that it considers reasonable.

Limit

(3) The sum of the total amount of compensation under subsections 239(1) and (2) in respect of the partner must not exceed $2,400.

Note: The amount of $2,400 is indexed under section 404.

241 Whom the compensation is payable to

(1) Compensation under section 239 for the cost of the financial advice or legal advice is payable to:
  (a) the person who made the claim for compensation; or
  (b) if that person so directs:
    (i) the person who gave the advice; or
    (ii) any other person who incurred the cost of the advice.

Note: A special rule applies if there is a trustee under section 432.

(2) An amount paid to the person who gave the advice discharges any liability of any other person for the cost of the advice to the extent of the payment.

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Division 4—Continuing permanent impairment and incapacity etc. compensation for wholly dependent partners

242 Continuing permanent impairment and incapacity etc. compensation for wholly dependent partners

(1) The Commonwealth is liable to pay compensation for a wholly dependent partner of a deceased member if:

(a) the member was paid compensation for the week before the week in which the member died under one or more of the following provisions:

(i) section 68, 71 or 75 (permanent impairment);

(ii) Part 3 or 4 of Chapter 4 (incapacity for service or work);

(iii) Part 6 of Chapter 4 (Special Rate Disability Pension);

(iv) Division 3A of Part 7 of Chapter 4 (Additional Disablement Amount); and

(b) a claim for compensation in respect of the partner has been made under section 319.

(2) In subsection (1):

(a) a reference to compensation paid for a week does not include a reference to compensation paid as a lump sum; and

(b) a reference to compensation paid includes a reference to compensation that the member was entitled to be paid.

243 Amount of permanent impairment and incapacity etc. compensation

(1) The amount of compensation that the Commonwealth is liable to pay under section 242 is the amount that is 12 times:

(a) the total amount of compensation that the member was paid under the provisions mentioned in paragraph 242(1)(a) for the week before the week in which the member died; or

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(b) the total amount of compensation that the member was entitled to have been paid under those provisions for that week;

(as the case requires).

(2) The amount mentioned in subsection (1) is the total amount of compensation that the Commonwealth is liable to pay under section 242, even if more than one person is entitled to compensation under that section because of the same deceased member's death.

244 Whom permanent impairment and incapacity etc. compensation is payable to

(1) Compensation for the partner under section 242 is payable to the partner.

Note: A special rule applies if there is a trustee under section 432.

(2) If 2 or more partners are entitled to compensation under section 242 because of the same deceased member's death, then the compensation is payable in accordance with the directions of the Commission.

(3) In making directions under subsection (2), the Commission must have regard to any loss of financial support suffered by the partners as a result of the member's death. The Commission must not have regard to any other matter.

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Division 5—MRCA supplement for wholly dependent partners

245 Eligibility for MRCA supplement

A wholly dependent partner of a deceased member is eligible for MRCA supplement under this section if:

(a) section 12 applies in respect of the member; and

(b) the partner is an Australian resident (within the meaning of section 5G of the VEA).

Note: Section 246 sets out some circumstances when MRCA supplement is not payable.

246 MRCA supplement not payable in some circumstances

People leaving Australia otherwise than temporarily

(1) A wholly dependent partner who leaves Australia otherwise than temporarily is not eligible for MRCA supplement under section 245 after the day on which he or she left Australia.

Temporary absence from Australia

(2) A wholly dependent partner who is temporarily absent from Australia and has been so absent for more than 26 weeks is not eligible for MRCA supplement under section 245 after the first 26 weeks of the absence.

When a person becomes eligible for MRCA supplement after leaving Australia

(3) The wholly dependent partner mentioned in subsections (1) and (2) again becomes eligible to receive MRCA supplement under section 245 on the later of the following days:

(a) the day on which the partner returns to Australia; or

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(b) the day on which the partner notifies the Commission of his or her return to Australia.

Persons receiving other payments

(4) Even though a wholly dependent partner is eligible for MRCA supplement under section 245, the supplement is not payable to the partner if he or she is receiving:
(a) veterans supplement under section 118B of the VEA; or
(b) a telephone allowance under the *Social Security Act 1991*; or
(c) MRCA supplement under Division 4 of Part 7 of Chapter 4; or
(d) energy supplement under Part 2.25B of the *Social Security Act 1991* or Part VIIAD of the VEA; or
(e) a social security payment (within the meaning of the *Social Security Act 1991*) for which a pension supplement amount (within the meaning of that Act) is used to work out the rate of the payment; or
(f) a service pension (within the meaning of the VEA); or
(g) a veteran payment made under an instrument made under section 45SB of the VEA.

247 Rate of MRCA supplement

The rate of MRCA supplement that is payable under section 245 is the rate of veterans supplement that is payable from time to time under section 118D of the VEA.

248 Payment of MRCA supplement

MRCA supplement generally payable fortnightly

(1) Unless a determination under subsection (2) is in force in relation to the partner, a wholly dependent partner's MRCA supplement under section 245 is payable on each pension payday (within the meaning of subsection 5Q(1) of the VEA) on which:
(a) the partner is eligible for the MRCA supplement; and

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(b) the MRCA supplement is payable to the partner.

Note: If there is a trustee under section 432, then the MRCA supplement would be payable to the trustee.

MRCA supplement may be payable weekly

(2) The Commission may determine, in writing, that a partner's MRCA supplement under section 245 is payable in 2 payments (the ***part payments***) if the partner is a member of a class specified under subsection (4).

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

(4) The Commission may, by legislative instrument, specify a class of wholly dependent partner for the purposes of subsection (2).

(5) The first of the part payments:

(a) is an amount equal to one half of the rate of veterans supplement that is payable from time to time under section 118D of the VEA; and

(b) is payable on each Thursday that is not a pension payday (within the meaning of subsection 5Q(1) of that Act) on which:

(i) the partner is eligible for the MRCA supplement; and

(ii) the MRCA supplement is payable to the partner.

Note: If there is a trustee under section 432, then the MRCA supplement would be payable to the trustee.

(6) The other of the part payments:

(a) is an amount equal to one half of the rate of veterans supplement that is payable from time to time under section 118D of the VEA; and

(b) is payable 7 days after the first of the part payments is payable to the partner.

Note: If there is a trustee under section 432, then the MRCA supplement would be payable to the trustee.

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(7) If a partner's MRCA supplement under section 245 is payable in part payments, it is taken for the purposes of this Act that:

(a) a single supplement is payable on each pension payday (within the meaning of subsection 5Q(1) of the VEA); and

(b) that supplement is payable when the last of the part payments is, or is to be, made; and

(c) the amount of that supplement is equal to the total of the part payments.

(8) However, sections 426 and 431 (about deductions of amounts) apply as if each of the part payments were a separate supplement.

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Part 3—Compensation for eligible young persons dependent on certain deceased members, members or former members

Division 1—Simplified outline of this Part

250 Simplified outline of this Part

This Part provides compensation and other benefits for the children of certain deceased, current and former members. Young dependants under 25 might also be entitled to compensation or benefits even though they are not the child of a deceased, current or former member.

Divisions 2 to 4 provide compensation to children and young people who were dependants of deceased members to whom section 12 applies.

Division 2 provides lump sum compensation for most children and young people. Divisions 3 and 4 provide an additional weekly amount and lump sum for certain children and young people who were wholly or mainly dependent on deceased members.

Under Division 6, the Commission can set up a scheme to provide education and training for children and young people who are the dependants of certain deceased, current and former members.

A child or young person who is entitled to compensation under this Chapter might also be entitled to have free treatment, or compensation for treatment, provided under Chapter 6.

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Division 2—Lump sum compensation for member's death for certain eligible young persons

251 Lump sum compensation for member's death for certain eligible young persons

The Commonwealth is liable to pay compensation for a person if:

(a) the person:
  (i) was an eligible young person; and
  (ii) was a dependant of a deceased member;
  immediately before the member's death; and
(b) section 12 applies in respect of the member; and
(c) a claim for compensation in respect of the person has been made under section 319.

Note 1: Section 257 sets out who the compensation is payable to.

Note 2: This Part does not apply to an eligible young person who was also the wholly dependent partner of the deceased member (see section 260).

252 Amount of compensation for dependent eligible young persons

The amount of compensation that the Commonwealth is liable to pay under section 251 for the eligible young person is $60,000.

Note: The amount of $60,000 is indexed under section 404.

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Division 3—Weekly compensation for certain eligible young persons

253 Weekly compensation for certain eligible young persons

(1) The Commonwealth is liable to pay compensation for a person for a week if:

(a) the person is an eligible young person for the week or a part of the week; and

(b) the person was a dependant of a deceased member immediately before the member's death; and

(c) either:

(i) the young person was wholly or mainly dependent on the member immediately before the member's death; or

(ii) the young person would have been wholly or mainly dependent on the member for the week or the part of the week if the member had not died; and

(d) section 12 applies in respect of the member; and

(e) a claim for compensation in respect of the person has been made under section 319.

Note 1: Section 257 sets out who the compensation is payable to.

Note 2: This Part does not apply to an eligible young person who was also the wholly dependent partner of the deceased member (see section 260).

(2) The Commonwealth is only liable to pay compensation for an eligible young person who is born alive after the deceased member's death from the week in which the young person is born.

254 Amount of weekly compensation

The amount of compensation that the Commonwealth is liable to pay under section 253 for the eligible young person for a week is $135.34.

Note: The amount of $135.34 is indexed under section 404.

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Division 4—Continuing permanent impairment and incapacity etc. compensation for certain eligible young persons

255 Continuing permanent impairment and incapacity etc. compensation for certain eligible young persons

(1) The Commonwealth is liable to pay compensation for a person if:

(a) the person:

(i) was an eligible young person; and

(ii) was a dependant of a deceased member;

immediately before the member's death; and

(b) the person was wholly or mainly dependent on the member immediately before the member's death; and

(c) the member was paid compensation for the week before the week in which the member died under one or more of the following provisions:

(i) section 68, 71 or 75 (permanent impairment);

(ii) Part 3 or 4 of Chapter 4 (incapacity for service or work);

(iii) Part 6 of Chapter 4 (Special Rate Disability Pension);

(iv) Division 3A of Part 7 of Chapter 4 (Additional Disablement Amount); and

(d) there is no wholly dependent partner of the member:

(i) who is entitled to compensation under section 242; or

(ii) who would be entitled to compensation under that section if a claim for compensation in respect of the partner were made; and

(e) a claim for compensation in respect of the person has been made under section 319.

Note 1: Section 257 sets out who the compensation is payable to.

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Note 2: This Part does not apply to an eligible young person who was also the wholly dependent partner of the deceased member (see section 260).

(2) In paragraph (1)(c):

(a) a reference to compensation paid for a week does not include a reference to compensation paid as a lump sum; and

(b) a reference to compensation paid includes a reference to compensation that the member was entitled to be paid.

256 Amount of permanent impairment and incapacity etc. compensation

(1) The amount of compensation that the Commonwealth is liable to pay under section 255 is the amount that is 12 times:

(a) the total amount of compensation that the member was paid under the provisions mentioned in paragraph 255(1)(c) for the week before the week in which the member died; or

(b) the total amount of compensation that the member was entitled to be paid under those provisions for that week;

(as the case requires).

(2) The amount mentioned in subsection (1) is the total amount of compensation that the Commonwealth is liable to pay under section 255, even if more than one person is entitled to compensation under that section because of the same deceased member's death.

Note: If more than one person is entitled to compensation under section 255, the amount mentioned in subsection (1) is payable in accordance with the directions of the Commission (see section 257).

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Division 5—Whom compensation under Divisions 2 to 4 is payable to

257 Whom the compensation is payable to

(1) Compensation under Divisions 2 to 4 is payable to:

(a) if the eligible young person is less than 18 years old—the person who has primary responsibility for the daily care of the young person; or

(b) otherwise—the eligible young person.

Note: A special rule applies if there is a trustee under section 432.

(2) If 2 or more eligible young persons are entitled to compensation under section 255 because of the same deceased member's death, then compensation under that section is payable in accordance with the directions of the Commission.

(3) In making directions under subsection (2), the Commission must have regard to any loss of financial support suffered by the eligible young persons as a result of the member's death. The Commission must not have regard to any other matter.

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Division 6—Education scheme for certain eligible young persons and other children

Subdivision A—Preliminary

257A Definitions

(1) In this Division:

VEA eligible child means:

(a) a child of a deceased member of the Forces, or of a deceased member of a Peacekeeping Force, being a member:

(i) whose death was defence-caused (within the meaning of the VEA); or

(ii) who was, immediately before the member's death, a member to whom subsection 22(4) or section 24 of the VEA applied; or

(iii) who was, immediately before the member's death, in receipt of a pension under Part IV of the VEA in respect of incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27(1) of that Act; or

(b) a child of a member of the Forces, or of a member of a Peacekeeping Force, being a member:

(i) to whom subsection 22(4) or section 24 of the VEA applies; or

(ii) who is in receipt of a pension under Part IV of the VEA in respect of incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27(1) of that Act; or

(c) a child of a deceased veteran, being a veteran:

(i) whose death was war-caused (within the meaning of the VEA); or

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(ii) who was, immediately before the veteran's death, a veteran to whom subsection 22(4) or section 24 of the VEA applied; or

(iii) who was, immediately before the veteran's death, in receipt of a pension under Part II of the VEA in respect of incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27(1) of that Act; or

(iv) who was a prisoner of war at a time when the veteran was on operational service; or

(d) a child of a veteran, being a veteran:

(i) to whom subsection 22(4) or section 24 of the VEA applies; or

(ii) who is in receipt of a pension under Part II of the VEA in respect of incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27(1) of that Act; or

(e) a child of a deceased veteran, being a child who is in receipt of a pension under subsection 13(4) of the VEA; or

(f) a person determined under subsection 257C(4) of this Act to be included in a class that has been determined by the Commission under subsection 257B(1) of this Act.

VEA eligible grandchild means a person determined under subsection 257C(4) to be included in a class of persons that has been determined by the Commission under subsection 257B(2).

(2) If, after the death of a member of the Forces, or of a member of a Peacekeeping Force, a pension is granted in respect of the member under Part IV of the VEA, or the rate of the pension granted to the member under Part IV of the VEA is increased, as from a date before the death of the member in circumstances where:

(a) subsection 22(4) or section 24 of the VEA applied to the member; or

(b) the member was suffering from an incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27(1) of the VEA;

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then, the member is taken, for the purposes of paragraphs (a) and (b) of the definition of ***VEA eligible child*** in subsection (1) of this section, to have been:

(c) if paragraph (a) of this subsection applies—a member to whom subsection 22(4) or section 24 of the VEA applied immediately before the member's death; or

(d) if paragraph (b) of this subsection applies—in receipt of that pension or of pension at that increased rate, as the case may be, immediately before the member's death.

(3) If, after the death of a veteran, a pension is granted in respect of the veteran under Part II of the VEA, or the rate of the pension granted to the veteran under Part II of that Act is increased, as from a date before the death of the veteran in circumstances where:

(a) subsection 22(4) or section 24 of the VEA applied to the veteran; or

(b) the veteran was suffering from an incapacity of a kind described in item 1, 2, 3, 4, 5 or 6 of the table in subsection 27(1) of the VEA;

then, the veteran is taken, for the purposes of paragraphs (c) and (d) of the definition of ***VEA eligible child*** in subsection (1) of this section, to have been:

(c) if paragraph (a) of this subsection applies—a veteran to whom subsection 22(4) or section 24 of the VEA applied immediately before the veteran's death; or

(d) if paragraph (b) of this subsection applies—in receipt of that pension or of pension at that increased rate, as the case may be, immediately before the veteran's death.

Extended meaning of child

(4) A reference in subsection (1) to a child of a person (however described) includes a reference to any child who is, or was immediately before the death of the person, wholly or substantially dependent on the person.

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(5) For the purposes of subsection (4), if a person is, under a law of the Commonwealth or of a State or Territory, liable to maintain a child, the child is taken to be wholly or substantially dependent on that person.

Certain expressions have same meaning as in VEA

(6) The following expressions have the same meaning when used in this section as they have in the VEA:
(a) member of the Forces;
(b) member of a Peacekeeping Force;
(c) veteran.

257B Determination of classes for purposes of definitions of *VEA eligible child* and *VEA eligible grandchild*

(1) The Commission may, by legislative instrument, determine a class of persons for the purposes of paragraph (f) of the definition of ***VEA eligible child*** in subsection 257A(1). However, the persons must be the children of veterans (within the meaning of the VEA) who rendered service before 1 July 2004.

(2) The Commission may, by legislative instrument, determine a class of persons for the purposes of the definition of ***VEA eligible grandchild*** in subsection 257A(1). However, the persons must be the grandchildren of veterans (within the meaning of the VEA) who have rendered operational service in Vietnam that is covered by section 6F of the VEA or section 446 or 450 of this Act.

Variation or revocation

(3) The Commission may, by legislative instrument, vary or revoke a determination under subsection (1) or (2).

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257C Determination that person is included in class determined under section 257B

Application for determination

(1) A person may make an application to the Commission for a determination that the person is included in one of the following classes of persons (a ***determined class***):

(a) a class of persons determined by the Commission under subsection 257B(1);

(b) a class of persons determined by the Commission under subsection 257B(2).

(2) The application may be made on behalf of the person:

(a) with the person's approval; or

(b) by the person's legal personal representative; or

(c) if the person is unable, because of physical or mental incapacity, to approve someone to make the application on the person's behalf—by another person approved by the Commission; or

(d) if the person is under the age of 18 years:

(i) by a parent or guardian of the person; or

(ii) by someone approved by a parent or guardian of the person; or

(iii) if there is not a parent or guardian of the person alive, or willing and able to make, or approve someone to make such an application on behalf of the person—by another person approved by the Commission.

(3) The application is to be lodged at a place approved by the Commission under subsection 323(2) and is taken to have been made on a day determined under that subsection.

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Determination that person is included in a class

(4) If an application has been made under subsection (1) in respect of a person, the Commission must determine:

(a) if the Commission is satisfied that the person falls within a determined class—that the person is included in that determined class; or

(b) otherwise—that the person is not included in a determined class.

Subdivision B—Education scheme for certain eligible young persons and other children

258 Education scheme for certain eligible young persons and other children

(1) The Commission may determine, in writing, a scheme to provide education and training for:

(a) an eligible young person who is a dependant of the following member or former member:

(i) a member or former member who satisfies the eligibility criteria in section 199 (persons who are eligible for Special Rate Disability Pension), or who has satisfied those criteria during some period of his or her life;

(ia) a member or former member who satisfies the eligibility criteria in section 220A (Additional Disablement Amount), or who has satisfied those criteria during some period of the member's life;

(iii) a member or former member who suffers an impairment, as a result of one or more service injuries or diseases, that the Commission has determined under Part 2 of Chapter 4 constitutes 80 or more impairment points; and

(b) an eligible young person who, immediately before a deceased member's death, was a dependant of the member in respect of whom section 12 applies; and

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(c) a VEA eligible child; and
(d) a VEA eligible grandchild.

Note: This Part does not apply to an eligible young person who was also the wholly dependent partner of the deceased member (see section 260).

(1A) If the Commission is taken to have accepted liability for an injury sustained, or a disease contracted, by a member or former member (the ***original condition***) because of the operation of section 24A, then subparagraph (1)(a)(iii) of this section does not apply in respect of the member or former member unless:
(a) the Commission has accepted liability for another injury or disease of the member or former member (other than because of the operation of section 24A of this Act); or
(b) the Commission is satisfied that:
(i) the member, or former member, has suffered additional impairment as result of another injury or disease or as a result of a deterioration in the original condition; and
(ii) the increase in the member's, or former member's, overall impairment constitutes at least 5 impairment points.

(2) A claim under section 319 must be made in respect of an eligible young person, a VEA eligible child or a VEA eligible grandchild in order for the person or child to be provided with education and training under the scheme.

(3) The scheme may provide for the following:
(a) the payment of maintenance allowances for eligible young persons, VEA eligible children or VEA eligible grandchildren who are being provided with education or training under the scheme;
(aa) the payment of scholarships for eligible young persons, VEA eligible children or VEA eligible grandchildren who are being provided with education or training under the scheme;

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(b) how applications for education or training for eligible young persons, VEA eligible children or VEA eligible grandchildren are made under the scheme;
(c) investigating and determining those applications;
(d) the establishment, membership and operation of any body to perform the functions, and exercise the powers, that are conferred on the body by or under the scheme in respect of the operation of the scheme;
(e) guidance and counselling services in respect of the education or training of eligible young persons, VEA eligible children or VEA eligible grandchildren under the scheme.

(4) The Commission may, by written determination, vary or revoke a determination under subsection (1).

(5) A determination, and any variation or revocation of a determination, under this section has no effect unless the Minister has approved the determination, variation or revocation in writing.

(6) A determination, and any variation or revocation of a determination, under this section prepared by the Commission and approved by the Minister is a legislative instrument made by the Minister on the day on which the determination, variation or revocation is approved.

(7) This section does not apply in relation to a person who is receiving a veteran payment made under an instrument made under section 45SB of the VEA.

259 Completing courses begun before turning 25 years old

This Division, and the scheme established under section 258, continue to apply to a person after he or she turns 25 if:
(a) before turning 25, the person began a course of education or training provided under the scheme; and
(b) the person turns 25 before finishing the course; and

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(c) after turning 25, the person continues the course in order to finish it.

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Division 7—Exclusion of Part for wholly dependent partners

260 Exclusion of Part for wholly dependent partners

This Part does not apply to an eligible young person who was dependent on a deceased member immediately before the member's death if the eligible young person was also the wholly dependent partner of the member at that time.

Note: A wholly dependent partner of a deceased member is entitled to compensation under Part 2.

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Part 4—Compensation for dependants other than wholly dependent partners and eligible young persons

261 Simplified outline of this Part

This Part provides compensation for dependants of deceased members to whom section 12 applies (other than partners and children of those members).

Each dependant can be paid a lump sum determined by the Commission.

262 Compensation for dependants other than wholly dependent partners and eligible young persons

The Commonwealth is liable to pay compensation for a person if:

(a) the person was a dependant of a deceased member immediately before the member's death; and

(b) the dependant was neither:

(i) a wholly dependent partner of the member; nor

(ii) an eligible young person who was a dependant of the member;

immediately before the member's death; and

(c) section 12 applies in respect of the member; and

(d) a claim for compensation in respect of the person has been made under section 319.

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263 Amount of compensation for other dependants

(1) The amount of compensation that the Commonwealth is liable to pay under section 262 in respect of a dependant is the amount that the Commission determines is reasonable. However:

(a) that amount must not exceed $60,000; and

(b) the total amount paid under section 262 in respect of all dependants of a particular deceased member must not exceed $190,000.

Note: The amounts of $60,000 and $190,000 are indexed under section 404.

(2) In making a determination under subsection (1), the Commission must have regard to:

(a) any financial loss suffered by the dependant as a result of the member's death (other than compensation paid or payable under this Act); and

(b) the degree to which the dependant was dependent on the deceased member; and

(c) the length of time that the dependant would have been dependent on the member.

The Commission must not have regard to any other matter (in particular, any amount of compensation paid or payable under this Act before the member died).

264 Whom the compensation is payable to

Compensation for a dependant under section 262 is payable to:

(a) if the dependant is less than 18 years old—the person who has primary responsibility for the daily care of the dependant; or

(b) otherwise—the dependant.

Note: A special rule applies if there is a trustee under section 432.

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Part 5—Compensation for funeral expenses

Division 1—Simplified outline of this Part

265 Simplified outline of this Part

This Part provides compensation in respect of the funeral of certain deceased members and dependants of deceased members.

Division 2 provides compensation to pay for the cost of the funeral of a deceased member in respect of whom section 12 applies.

Division 3 provides compensation in respect of the funeral of certain other deceased members and certain dependants of deceased members.

In certain cases, compensation will be payable in respect of the funeral of a deceased member under both Divisions 2 and 3. In such cases, the amount of compensation under Division 2 will be reduced by the amount of compensation paid under Division 3.

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Division 2—Deceased members to whom section 12 applies

266 Compensation for cost of funeral

(1) The Commonwealth is liable to pay compensation for the cost of a deceased member's funeral if:
  (a) section 12 applies in respect of the member; and
  (b) a claim for compensation has been made under section 319.

(2) The claim under section 319 may only be made:
  (a) in respect of a dependant of the deceased member if the dependant incurred the cost of the funeral; or
  (b) by the deceased member's legal personal representative.

267 Amount of funeral compensation

(1) The Commission must determine the amount of compensation under section 266 that it considers reasonable for the cost of the deceased member's funeral. The amount must not exceed the amount determined in accordance with subsection (3).

(2) In determining the amount, the Commission must have regard to:
  (a) the charges ordinarily made for funerals in the place where the funeral was carried out; and
  (b) any amount paid or payable in respect of the cost of the funeral under any other law of the Commonwealth.

  The Commission must not have regard to any other matter.

(3) The maximum amount of compensation under subsection (1) is:
  (a) $9,000; or
  (b) if the regulations prescribe a higher amount—that amount.

  Note: The amount of $9,000 is indexed under section 404.

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267A Offsets

(1) If the Commonwealth is liable to pay compensation in respect of a deceased member's funeral under both sections 266 and 268AA, the amount of compensation under section 266 must be reduced by the amount of compensation paid under section 268AA to the estate of the deceased member in respect of the deceased member's funeral.

(2) If the Commonwealth is liable to pay compensation in respect of a deceased member's funeral under both sections 266 and 268AB, the amount of compensation under section 266 must be reduced by the amount of compensation paid under section 268AB in respect of the deceased member's funeral.

(3) If the Commonwealth is liable to pay compensation in respect of a deceased member's funeral under both sections 266 and 268AC, the amount of compensation under section 266 must be reduced by the amount of compensation paid under section 268AC in respect of the deceased member's funeral.

268 Whom funeral compensation is payable to

(1) Compensation under section 266 for the cost of a deceased member's funeral is payable to:
  (a) the person who made the claim for compensation; or
  (b) if that person so directs:
    (i) the person who carried out the funeral; or
    (ii) any other person who incurred the cost of the funeral.

Note: A special rule applies if there is a trustee under section 432.

(2) A payment under section 266 to a person who carried out the funeral discharges any liability of any other person for the cost of the funeral to the extent of the payment.

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Division 3—Other deceased members and dependants of deceased members

268AA Automatic payment of funeral compensation to estate of certain deceased members

The Commonwealth is liable to pay, to the estate of a deceased member, compensation in respect of the deceased member's funeral if, immediately before the deceased member died:

(a) the member was being paid a pension under Part II or IV of the VEA at the rate specified in subsection 22(4) of that Act; or

(b) the member was being paid a pension under Part II or IV of the VEA as a member to whom section 24 of that Act applied; or

(c) the member was being paid a pension under Part II or IV of the VEA at a rate that had been increased under section 27 of that Act because of incapacity of a kind described in any of items 1 to 8 of the table in subsection 27(1) of that Act; or

(d) the Commission was satisfied that the member had, before 1 July 2004, been made a prisoner of war at a time when the member was rendering operational service.

Note: A claim for compensation under section 319 is not required.

268AB Funeral compensation for certain other deceased members

(1) The Commonwealth is liable to pay compensation in respect of a deceased member's funeral if:

(a) any of subsections (3) to (5) apply in respect of the deceased member; and

(b) the Commonwealth is not liable to pay compensation in respect of the deceased member's funeral under section 268AA; and

(c) a claim for compensation has been made under section 319.

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(2) The claim under section 319 may only be made:
  (a) in respect of a dependant of the deceased member if the dependant incurred the cost of the funeral; or
  (b) by the deceased member's legal personal representative.

(3) This subsection applies in respect of a deceased member if the member died in indigent circumstances.

(4) This subsection applies in respect of a deceased member if:
  (a) the member died:
    (i) in a hospital or other institution; or
    (ii) while travelling to or from a hospital or other institution; or
    (iii) after having been discharged from a hospital or other institution in which the member was being treated for a terminal illness; or
    (iv) while being treated for a terminal illness at the member's home instead of at a hospital or other institution; and
  (b) if subparagraph (a)(i) or (ii) applies—treatment is or was provided in the hospital or other institution; and
  (c) in any case—the treatment is or was arranged by the Commission under Chapter 6 of this Act or Part V of the VEA.

(5) This subsection applies in respect of a deceased member if, after the death of the member:
  (a) a pension is granted to the member that is determined to be payable, from a date before the member's death:
    (i) at a rate that is worked out under subsection 22(4) of the VEA; or
    (ii) at a rate that is worked out under section 24 of the VEA; or
    (iii) at a rate that is worked out under section 27 of the VEA because the member was suffering from incapacity of a

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kind described in any of items 1 to 8 of the table in subsection 27(1) of that Act; or

(b) the rate of a pension that was payable to the member under Part II or IV of the VEA is increased, as from a date before the member's death because:

(i) subsection 22(4) or section 24 of the VEA applied to the member as from that date; or

(ii) section 27 of the VEA applied to the member as from that date because of incapacity of a kind described in any of items 1 to 8 of the table in subsection 27(1) of that Act; or

(c) information is received which satisfies the Commission that the member was, before 1 July 2004, made a prisoner of war at a time when the member was rendering operational service.

268AC Funeral compensation for certain dependants of deceased members

(1) The Commonwealth is liable to pay compensation in respect of the funeral of a dependant of a deceased member if:

(a) any of subsections (3) to (5) apply in respect of the dependant; and

(ab) the Commonwealth is not liable to pay compensation in respect of the deceased dependant's funeral under section 268AA or 268AB; and

(b) a claim for compensation has been made under section 319.

(2) The claim under section 319 may only be made:

(a) by the deceased dependant's legal personal representative; or

(b) by another person approved by the Commission to make the claim.

(3) This subsection applies in respect of a dependant of a deceased member if:

(a) the dependant is not a reinstated pensioner (within the meaning of the VEA); and

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(b) the dependant died in indigent circumstances; and

(c) any of the following apply in respect of the deceased member:

(i) the member's death was a war-caused death (within the meaning of the VEA);

(ii) immediately before the member's death, the member was being paid a pension under Part II or IV of the VEA as a member to whom section 24 of that Act applied;

(iii) immediately before the member's death, the member was being paid a pension under Part II or IV of the VEA at a rate that had been increased under section 27 of that Act because of incapacity of a kind described in any of items 1 to 8 of the table in subsection 27(1) of that Act.

(4) This subsection applies in respect of a dependant of a deceased member if the dependant:

(a) is a reinstated pensioner (within the meaning of the VEA); and

(b) died in indigent circumstances.

(5) This subsection applies in respect of a dependant of a deceased member if:

(a) either:

(i) the dependant was a wholly dependent partner of the deceased member; or

(ii) the dependant was both an eligible young person, and a dependant of the deceased member, immediately before the member's death; and

(b) the dependant died in indigent circumstances; and

(c) section 12 applies in respect of the deceased member.

268AD Amount of funeral compensation

Amount for section 268AA

(1) The amount of compensation payable under section 268AA is $3,000.

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Amount for section 268AB

(2) The amount of compensation payable under section 268AB is the sum of:

(a) the lesser of the following amounts:

(i) $3,000;

(ii) an amount equal to the amount paid or payable in respect of the funeral of the deceased member; and

(b) if the body of the deceased member was transported in the circumstances mentioned in subsection (3)—an amount equal to a reasonable charge for transporting the body of the deceased member.

(3) For the purposes of paragraph (2)(b), the circumstances are as follows:

(a) the deceased member died at a place other than the member's ordinary place of residence;

(b) the deceased member was absent from the member's ordinary place of residence for the purpose of obtaining medical treatment;

(c) the Commission arranged for the provision of the treatment;

(d) a charge was made by the funeral director expressly for transporting the body of the deceased member from the place where the member died to the place where the member ordinarily resided immediately before the member died;

(e) the charge made by the funeral director did not relate to transporting the body of the deceased member:

(i) outside Australia; or

(ii) from one place in the metropolitan area of a capital city to another place in the metropolitan area of that city.

(4) For the purposes of paragraph (3)(b), a deceased member is taken to be absent from the member's ordinary place of residence for the purpose of obtaining medical treatment:

(a) if the member is travelling from the member's ordinary place of residence for the purpose of obtaining medical treatment; or

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(b) if the member is returning to the member's ordinary place of residence after having obtained medical treatment; or
(c) if the member is being provided with medical treatment at a place other than the member's ordinary place of residence; or
(d) if the member is away from the member's ordinary place of residence on the recommendation of the member's doctor by way of treatment for an injury or disease.

Amount for section 268AC

(5) The amount of compensation payable under section 268AC in respect of a deceased dependant of a deceased member is the lesser of the following amounts:
(a) $3,000;
(b) an amount equal to the amount paid or payable in respect of the funeral of the deceased dependant.

Amount paid or payable in respect of a funeral

(6) For the purposes of subparagraph (2)(a)(ii) and paragraph (5)(b), if a deceased member or deceased dependant (as the case may be) was a member of a contributory funeral benefit fund before their death, the amount paid or payable in respect of the funeral of the deceased member or deceased dependant (as the case may be) is the amount by which the cost of the funeral exceeds the amount of the benefit payable from that fund in relation to the deceased member or deceased dependant (as the case may be).

268AE Whom funeral compensation is payable to

(1) Compensation under section 268AB or 268AC in respect of a deceased member's funeral or a deceased dependant's funeral is payable to:
(a) the person who made the claim for compensation; or
(b) if that person so directs:
(i) the person who carried out the funeral; or
(ii) any other person who incurred the cost of the funeral.

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Note 1: A special rule applies if there is a trustee under section 432.

Note 2: Compensation under section 268AA is payable to the estate of a deceased member (see section 268AA).

(2) A payment under section 268AB or 268AC to a person who carried out the funeral discharges any liability of any other person for the cost of the funeral to the extent of the payment.

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Chapter 5AA—Compensation relating to prisoners of war

Part 1—Preliminary

268AF Simplified outline of this Chapter

This Chapter provides compensation in respect of former members and civilians who have been prisoners of war.

Part 2 provides compensation payments in respect of former members and civilians interned by certain military forces during designated war periods.

Under Part 3, a prisoner of war recognition supplement is payable to former members and civilians who were interned by certain military forces during designated war periods.

268AG Definitions

(1) In this Chapter:

civilian means a person who is not a member or former member.

compensation eligibility date: see section 268AH.

designated war period: see section 268AH.

enemy State means:

(a) a European State that was at war with the Crown at any time during the period starting on 3 September 1939 and ending at the end of 11 May 1945; or

(b) a European ally (whether or not a State) of a State covered by paragraph (a).

interned means:

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(a) confined in a camp, building, prison, cave or other place (including a vehicle); or
(b) restricted to residing within specified limits.

military forces means air forces, naval forces, land forces or other military forces (however described).

relevant military forces: see section 268AH.

(2) For the purposes of this Chapter, the definition of ***partner*** in section 5 has effect as if a reference to a member includes a civilian.

268AH Meaning of *relevant military forces*, *designated war period* and *compensation eligibility date*

The following table sets out:
(a) the military forces that are ***relevant military forces***; and
(b) the period that is the ***designated war period*** for those relevant military forces; and
(c) the date that is the ***compensation eligibility date*** in respect of those relevant military forces and that designated war period.

Relevant military forces, designated war period and compensation eligibility date

Item	Column 1 Relevant military forces	Column 2 Designated war period	Column 3 Compensation eligibility date
1	Military forces of an enemy State	the period starting on 3 September 1939 and ending at the end of 11 May 1945	1 January 2007
2	Military forces of North Korea	the period starting on 27 June 1950 and ending at the end of 19 April 1956	1 January 2003
3	Military forces of	the period starting on	1 January 2001

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Section 268AH

Relevant military forces, designated war period and compensation eligibility date

Item	Column 1 Relevant military forces	Column 2 Designated war period	Column 3 Compensation eligibility date
	Japan	7 December 1941 and ending at the end of 29 October 1945	

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Part 2—Compensation in respect of former members and civilians interned by certain military forces

268AI Simplified outline of this Part

This Part provides for compensation payments in respect of former members and civilians interned by certain military forces during designated war periods.

268AJ Compensation in respect of former members and civilians interned by certain military forces

Former members

(1) The Commonwealth is liable to pay compensation to a person if:
  (a) the person is a former member; and
  (b) the person was interned by relevant military forces at any time during the designated war period for the relevant military forces; and
  (c) the person was alive on the compensation eligibility date for the relevant military forces and designated war period; and
  (d) a claim for compensation in respect of the person has been made under section 319.

Partners of deceased members

(2) The Commonwealth is liable to pay compensation to a person in respect of a deceased member if:
  (a) the deceased member was interned by relevant military forces at any time during the designated war period for the relevant military forces; and

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(b) the deceased member died before the compensation eligibility date for the relevant military forces and designated war period; and

(c) the person was a partner of the deceased member immediately before the member's death; and

(d) the person was alive at the start of the compensation eligibility date for the relevant military forces and designated war period; and

(e) a claim for compensation in respect of the deceased member has been made under section 319.

Civilians

(3) The Commonwealth is liable to pay compensation to a person in the person's own right as a civilian if:

(a) the person was interned by the relevant military forces covered by item 1 or 3 of the table in section 268AH at any time during the designated war period for the relevant military forces; and

(b) the person was domiciled in Australia immediately before the civilian's internment; and

(c) the person was alive at the start of the compensation eligibility date for the relevant military forces and designated war period; and

(d) a claim for compensation in respect of the person has been made under section 319.

Partners of deceased civilians

(4) The Commonwealth is liable to pay compensation to a person in respect of a deceased civilian if:

(a) the deceased civilian was interned by the relevant military forces covered by item 1 or 3 of the table in section 268AH at any time during the designated war period for the relevant military forces; and

(b) the deceased civilian was domiciled in Australia immediately before the civilian's internment; and

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(c) the deceased civilian died before the compensation eligibility date for the relevant military forces and designated war period; and

(d) the person was a partner of the deceased civilian immediately before the civilian's death; and

(e) the person was alive at the start of the compensation eligibility date for the relevant military forces and designated war period; and

(f) a claim for compensation in respect of the deceased civilian has been made under section 319.

Dependants (other than partners and children) of deceased members

(5) The Commonwealth is liable to pay compensation to a person in respect of a deceased member if:

(a) the deceased member was interned by the relevant military forces covered by item 3 of the table in section 268AH at any time during the designated war period for the relevant military forces; and

(b) the deceased member died before the compensation eligibility date for the relevant military forces and designated war period; and

(c) the person was a dependant (within the meaning of the VEA), but not a partner or a child, of the deceased member immediately before the member's death; and

(d) the person was alive at the start of the compensation eligibility date for the relevant military forces and designated war period; and

(e) a claim for compensation in respect of the deceased member has been made under section 319.

One payment only

(6) The Commonwealth is not liable to pay compensation under subsection (1), (2), (3), (4) or (5) in respect of a person if:

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(a) compensation under any of those subsections has previously been paid in respect of the person; or

(b) a payment under any of the following has previously been made in respect of the person:

(i) the *Compensation (Japanese Internment) Act 2001*;

(ii) Schedule 5 to the *Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007*;

(iii) Part 2 of the *Veterans' Entitlements (Clarke Review) Act 2004*;

(iv) the *Veterans' Entitlements (Compensation—Japanese Internment) Regulations 2001*.

268AK Amount of compensation

The amount of compensation payable under section 268AJ is $25,000.

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Part 3—Prisoner of war recognition supplement

268AL Simplified outline of this Part

This Part provides for the payment of a prisoner of war recognition supplement to former members and civilians who were interned by certain military forces during designated war periods.

268AM Eligibility for prisoner of war recognition supplement

Former members

(1) A person is eligible for prisoner of war recognition supplement under this section if:
  (a) the person is a former member; and
  (b) the person was interned by relevant military forces at any time during the designated war period for the relevant military forces.

Civilians

(2) A person is eligible for prisoner of war recognition supplement under this section if:
  (a) the person was interned by the relevant military forces covered by item 1 or 3 of the table in section 268AH at any time during the designated war period for the relevant military forces; and
  (b) the person was domiciled in Australia immediately before the civilian's internment.

One supplement only

(3) A person is not entitled to more than one prisoner of war recognition supplement under this section.

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268AN Rate of prisoner of war recognition supplement

The rate of prisoner of war recognition supplement that is payable under section 268AM is $673.00 per fortnight.

Note: The amount of $673.00 is indexed under section 404B.

268AO Payment of prisoner of war recognition supplement

Prisoner of war recognition supplement under this Part is not payable to a person unless the person makes a claim for compensation under section 319.

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Chapter 5A—Acute and employment support

Part 1—Acute support

268A Simplified outline of this Part

The Commission may make a legislative instrument providing for assistance or benefits of a certain kind (such as child care, counselling and household services) to a member or former member or to a related person of a member, former member or deceased member.

268B Acute support package

Acute support package

(1) The Commission may, by legislative instrument, make provision for and in relation to the granting of a package (an ***acute support package***) of assistance or benefits of a specified kind to a person:

(a) who is a member or former member; or

(b) who is or was a related person of a member, former member or deceased member;

to assist the person to adjust to challenging life circumstances.

Note: Decisions of the Commission under this instrument are reviewable (see section 345B).

Eligibility criteria for acute support package

(2) The instrument must provide that a person is not eligible for an acute support package unless the criteria mentioned in subsection (3), (4), (5), (5AA), (5AB), (5A) or (6) are satisfied.

(3) If the person is a member or former member, the criteria are as follows:

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(a) the person is under 65 years of age at the time the person's eligibility for an acute support package is determined;

(b) the person is receiving, or is eligible to receive:

(i) compensation for incapacity under Part 3 or 4 of Chapter 4; or

(ii) a Special Rate Disability Pension; or

(iii) a pension under Part II of the VEA as a person to whom section 23, 24 or 25 of that Act applies; or

(iv) a veteran payment made under an instrument made under section 45SB of the VEA;

(c) the Commission is satisfied that the person, or a related person, is experiencing, or is at risk of experiencing, crisis.

(4) If the person is a related person of a member or former member, the criteria are as follows:

(a) the member or former member is under 65 years of age at the time the person's eligibility for an acute support package is determined;

(b) the member or former member is receiving, or is eligible to receive:

(i) compensation for incapacity under Part 3 or 4 of Chapter 4; or

(ii) a Special Rate Disability Pension; or

(iii) a pension under Part II of the VEA as a person to whom section 23, 24 or 25 of that Act applies; or

(iv) a veteran payment made under an instrument made under section 45SB of the VEA;

(c) the Commission is satisfied that the person is experiencing, or is at risk of experiencing, crisis.

(5) If the person is a wholly dependent partner of a deceased member (other than a wholly dependent partner covered by subsection (5AA)), the criteria are as follows:

(a) the person is under 65 years of age at the time the person's eligibility for an acute support package is determined;

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(b) the deceased member's death occurred no more than 2 years before the day the person's eligibility for the package is determined;

(c) either:

(i) the deceased member's death was related to service rendered by the member; or

(ii) the Commission is satisfied that the deceased member's death was a suicide related to service rendered by the member; or

(iii) the deceased member's death resulted from an injury (within the meaning of the DRCA).

(5AA) If the person is a war widow or war widower (both within the meaning of the VEA), the criterion is that the person is under 65 years of age at the time the person's eligibility for an acute support package is determined.

(5AB) If the person was:

(a) the partner of a deceased member immediately before the deceased member's death; and

(b) partly dependent on the deceased member at the date of the deceased member's death;

the criteria are as follows:

(c) the person is under 65 years of age at the time the person's eligibility for an acute support package is determined;

(d) the deceased member's death occurred no more than 2 years before the day the person's eligibility for the package is determined;

(e) the deceased member's death resulted from an injury (within the meaning of the DRCA).

(5A) If the person is a parent or step-parent of:

(a) a deceased member; or

(b) a wholly dependent partner of a deceased member; or

(c) another person who was the partner of a deceased member;

the criteria are as follows:

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(d) the deceased member's death occurred no more than 2 years before the day the person's eligibility for an acute support package is determined;

(e) either:

(i) the deceased member's death was related to service rendered by the member; or

(ii) the Commission is satisfied that the deceased member's death was a suicide related to service rendered by the member;

(f) the Commission is satisfied that the person is parenting a child of the deceased member;

(g) at the time the person's eligibility for the package is determined, the child is under 18 years;

(h) the Commission is satisfied that the person, or the child, is experiencing, or is at risk of experiencing, crisis.

(6) If the person was the partner of a member or former member, the criteria are as follows:

(a) the person is under 65 years of age at the time the person's eligibility for an acute support package is determined;

(b) at the time the person's eligibility for the package is determined, either or both of the following apply:

(i) the person ceased being the member's or former member's partner within the previous 12 months;

(ii) a child of the member or former member who is under 18 years lives with the person;

(c) the Commission is satisfied that the person is experiencing, or is at risk of experiencing, crisis.

Instrument may deal with various matters

(7) Without limiting subsection (1), the instrument may make provision for and in relation to the following:

(a) additional eligibility criteria for an acute support package;

(b) criteria for the granting of assistance or benefits;

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(c) the kinds of assistance or benefits that may be granted, which may include child care, counselling, household assistance, services to build capacity and academic and extra-curricular support for children;
(d) the conditions on which assistance or benefits are granted;
(e) limits (whether financial or otherwise) on the provision of assistance or benefits;
(f) the suspension or cancellation of the provision of assistance or benefits;
(g) arrangements for the payment of assistance or benefits.

(8) Without limiting paragraph (7)(a) or (b), the criteria may depend on the Commission being satisfied of one or more specified matters.

Definition of related person—extended meaning of member

(9) For the purposes of the definition of ***related person*** in subsection 15(2), a reference to a member includes a reference to a deceased member.

Note: A reference to a member in that definition also includes a reference to a former member (see section 20).

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Part 2—Employment support to former members

268C Simplified outline of this Part

The regulations may provide for assistance or benefits to former members to assist them to transition into civilian work.

268D Employment support to former members

(1) The regulations may make provision for and in relation to the granting of assistance or benefits of a specified kind to former members to assist them to transition into civilian work.

(2) Without limiting subsection (1), the regulations may make provision for and in relation to:
  (a) the eligibility criteria for the assistance or benefits; and
  (b) what a former member has to do to get the assistance or benefits; and
  (c) the conditions on which the assistance or benefits are granted; and
  (d) limits (whether financial or otherwise) on the provision of the assistance or benefits.

(3) Without limiting paragraph (2)(a), the criteria may depend on the Commission being satisfied of one or more specified matters.

(4) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

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Chapter 6—Treatment for injuries and diseases

Part 1—Simplified outline of this Chapter

269 Simplified outline of this Chapter

This Chapter deals with the provision of treatment for injuries and diseases for certain current and former members and dependants of deceased members.

Part 3 deals with a person's entitlement to treatment. Some people are entitled to treatment for a service injury or disease, while other people are entitled to treatment for any injury or disease.

Part 4 deals with compensation and MRCA supplement. A person may be compensated for the cost of treatment in special circumstances, such as treatment reasonably obtained before the Commission determines that the person is entitled to treatment under Part 3. Compensation for costs incurred in travelling to obtain treatment is also provided for. Part 4 also provides for MRCA supplement for those who are entitled to treatment under Part 3.

Generally, a claim for compensation must be made under section 319 to be entitled to treatment or compensation under this Chapter.

Part 5 contains offence provisions relating to treatment compensated or provided for under this Chapter. The offences relate to conduct by those claiming compensation or treatment under this Chapter, as well as conduct by practitioners and providers of pathology services.

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Part 3—Entitlement to provision of treatment

Division 1—Simplified outline of this Part

278 Simplified outline of this Part

This Part provides for treatment to be provided for the injuries and diseases of certain current and former members and dependants of deceased members.

Current and former members might be entitled to treatment for a service injury or disease rather than treatment under regulations made under the *Defence Act 1903*.

Current and former members who have suffered a serious impairment from a service injury or disease are entitled to treatment for any injury or disease.

Some partners and young dependants (such as children) of deceased members in respect of whom section 12 applies are also entitled to treatment for any injury or disease.

Generally, a claim for compensation in respect of the person must be made under section 319 to be entitled to the treatment.

Treatment might not be provided for an aggravated injury or disease if the aggravation or material contribution ceases.

Former members might be entitled to treatment for an injury or disease under this Part rather than receiving compensation for medical expenses under the DRCA. The Commission accepts liability for such an injury or disease under that Act and not this Act.

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The Commission can determine that specified classes of persons are eligible to be provided with specified kinds of treatment under this Part.

The Commission can arrange for treatment under this Part in accordance with arrangements it has with hospitals and doctors etc. or in accordance with a determination it makes under Division 3A or 4 of this Part.

A person who is entitled to treatment under this Part might also be entitled under Part 4 to compensation for the cost of treatment reasonably obtained before the Commission determines that the person is so entitled and for costs incurred in travelling to obtain the treatment. MRCA supplement is also payable under Part 4 for those who are entitled to treatment under this Part.

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Division 2—Treatment for some members and former members

279 Treatment for members entitled to treatment under Defence regulations

(1) A member is entitled to be provided with treatment under this Part for a service injury or disease of the member if:

(a) the Commission has accepted liability for the injury or disease (other than because of the operation of section 24A); and

(b) the member is entitled to medical and dental treatment under regulations made under the *Defence Act 1903*; and

(c) a claim for compensation in respect of the member has been made under section 319; and

(d) the Commission, after considering any advice from the Chief of the Defence Force, determines that it is more appropriate to provide treatment for the injury or disease under this Part than to provide such treatment under those regulations.

Note 1: Compensation might be payable in respect of treatment obtained before the Commission determines that the person is entitled to treatment (see section 288A).

Note 2: A person is not entitled to treatment for an aggravated injury or disease if the aggravation ceases (see section 283).

(2) A member may also be entitled to be provided with treatment under this Part for which the member is eligible in accordance with an instrument under section 284A.

280 Treatment for service injuries and diseases of former members and part-time Reservists etc.

A person is entitled to be provided with treatment under this Part for a service injury or disease of the person if:

(a) the person is a former member or a current part-time Reservist, cadet or declared member; and

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(b) the Commission has accepted liability for the service injury or disease (other than because of the operation of section 24A); and

(c) a claim for compensation in respect of the person has been made under section 319.

Note 1: Compensation might be payable in respect of treatment obtained before the Commission determines that the person is entitled to treatment (see section 288A).

Note 2: A person is not entitled to treatment for an aggravated injury or disease if the aggravation ceases (see section 283).

280A Treatment for certain injuries covered by the DRCA

Person not otherwise entitled to be provided with treatment under this Act

(1) A person is entitled to be provided with treatment under this Part for an injury (within the meaning of the DRCA) if, as a result of table item 1 of the table in subsection 144B(3) of that Act, this section applies to the person and the injury.

Note 1: Table item 1 applies to persons who are not entitled to be provided with treatment under this Act or the VEA for any other injury.

Note 2: The treatment is paid for with money appropriated under subsection 160(2) of the DRCA.

Person entitled to be provided with treatment under this Act for another injury or disease

(2) A person is entitled to be provided with treatment under this Part for an injury (within the meaning of the DRCA) if, as a result of table item 2 of the table in subsection 144B(3) of that Act, this section applies to the person and the injury.

Note 1: Table item 2 applies to persons who are entitled to be provided with treatment under section 279 or 280 of this Act for another injury.

Note 2: The treatment is paid for with money appropriated under section 423 of this Act.

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281 Treatment for persons with 60 impairment points

(1) Subject to subsections (2) and (3), a person is entitled to be provided with treatment under this Part for any injury or disease of the person if:

(a) the Commission has determined under Part 2 of Chapter 4 (permanent impairment) that an impairment resulting from one or more service injuries or diseases suffered by the person constitutes 60 or more impairment points; and

(b) the person's impairment continues to constitute 60 or more impairment points; and

(c) the treatment is provided to the person after the determination under Part 2 of Chapter 4 is made.

Note 1: Compensation might be payable in respect of treatment obtained before the Commission determines that the person is entitled to treatment (see section 288A).

Note 2: A person who ceases to be entitled to treatment under this section might still be entitled to treatment under section 282 or 282A.

(2) If the person is only suffering from a single aggravated injury or disease, then the person is only entitled to be provided with the treatment if the impairment resulting from the aggravation or material contribution constitutes, and continues to constitute, 60 or more impairment points.

(3) If an injury sustained, or a disease contracted, by the person (the ***original condition***) is covered by subsection (4), then the person is only entitled to treatment under subsection (1) if:

(a) the Commission has accepted liability for another injury or disease of the person (other than because of the operation of section 24A); or

(b) the Commission is satisfied that:

(i) the person has suffered additional impairment as a result of another injury or disease or as a result of a deterioration in the original condition; and

(ii) the increase in the person's overall impairment constitutes at least 5 impairment points.

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(4) The original condition is covered by this subsection if:

(a) before the date of commencement, the person made a claim for compensation under the DRCA in respect of the original condition; and

(b) as a result of the determination of that claim (including any reconsideration or review of a decision made in relation to that claim), liability to pay compensation in respect of the original condition was accepted.

282 Treatment for persons who are eligible for a Special Rate Disability Pension

A person is entitled to be provided with treatment under this Part for any injury or disease of the person if:

(a) the person satisfies the eligibility criteria in section 199 (persons who are eligible for Special Rate Disability Pension), or has satisfied those criteria during some period of his or her life; and

(b) the treatment is provided to the person after paragraph (a) begins to apply to the person.

Note 1: Compensation might be payable in respect of treatment obtained before the Commission determines that the person is entitled to treatment (see section 288A).

Note 2: A person who ceases to be entitled to treatment under this section might still be entitled to treatment under section 281.

282A Treatment for persons who are eligible for Additional Disablement Amount

A person is entitled to be provided with treatment under this Part for any injury or disease of the person if:

(a) the person satisfies the eligibility criteria in section 220A (Additional Disablement Amount), or has satisfied those criteria during some period of the person's life; and

(b) the treatment is provided to the person after paragraph (a) begins to apply to the person.

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Note: Compensation might be payable in respect of treatment obtained before the Commission determines that the person is entitled to treatment (see section 288A).

283 No treatment for aggravated injury or disease if aggravation ceases

A person is not entitled to be provided with treatment under section 279 or 280 for an aggravated injury or disease if the aggravation or material contribution ceases.

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Division 3—Treatment for certain dependants of deceased members

284 Treatment for certain wholly dependent partners and eligible young persons

Treatment for certain wholly dependent partners

(1) A wholly dependent partner of a deceased member is entitled to be provided with treatment under this Part for any injury or disease of the partner if:

(a) section 12 applies in respect of the member; and

(b) the treatment is provided to the partner after the member's death; and

(c) a claim for compensation in respect of the partner has been made under section 319.

Note: Compensation might be payable in respect of treatment obtained before the Commission determines that the person is entitled to treatment (see section 288A).

Treatment for certain eligible young persons

(2) A person is entitled to be provided with treatment under this Part for any injury or disease of the person if:

(a) the person is an eligible young person; and

(b) the person was an eligible young person who was wholly or mainly dependent on a deceased member immediately before the member's death; and

(c) section 12 applies in respect of the member; and

(d) the treatment is provided to the person after the member's death; and

(e) a claim for compensation in respect of the person has been made under section 319.

Note: Compensation might be payable in respect of treatment obtained before the Commission determines that the person is entitled to treatment (see section 288A).

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Division 3A—Entitlement to treatment in other circumstances

284A Specified treatment for specified members and others

(1) The Commission may, by legislative instrument, determine the following:

(a) that a member or former member included in a specified class is eligible to be provided with treatment of a specified kind under this Part;

(b) that a person who is the dependant of a member or former member and who is in a specified class is eligible to be provided with treatment of a specified kind under this Part;

(c) that a person who was the dependant of a member or former member and who is in a specified class is eligible to be provided with treatment of a specified kind under this Part;

(d) that a person who is not covered by paragraph (a), (b) or (c) and who is in a specified class is eligible to be provided with treatment of a specified kind under this Part.

(2) An instrument under subsection (1) has effect according to its terms, despite any other provision of this Act.

Example: An instrument could be made under this section determining eligibility for non-liability health care treatment under this Part for members or former members, or their dependants.

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Division 4—Administration of the provision of treatment

285 Treatment at hospitals and other institutions etc.

(1) For the purposes of this Part, the Commission may:

(a) enter into arrangements with the appropriate authority of the Commonwealth, a State or a Territory for the provision of care and welfare at a public hospital or other institution for persons entitled to be provided with treatment under this Part; and

(b) enter into arrangements with any other body operating a hospital or other institution for the provision of care and welfare at that hospital or institution for persons entitled to be provided with treatment under this Part; and

(c) enter into arrangements with any practitioner or other person qualified to provide treatment.

(2) In this section:

public hospital or other institution means a hospital or other institution that is operated by the Commonwealth, a State or a Territory.

286 Determination for providing treatment or pharmaceutical benefits

Commission may make determination

(1) The Commission may make a written determination of any one or more of the following:

(a) the places at which, the circumstances in which, and the conditions subject to which, a particular kind or class of treatment may be provided under this Part;

(b) the places at which, the circumstances in which, and the conditions subject to which, treatment may be provided under this Part to persons as private patients;

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(c) the places at which, the circumstances in which, and the conditions subject to which, pharmaceutical benefits may be provided under this Part;

(d) the kinds or classes of treatment that will not be provided under this Part;

(e) the places at which, the circumstances in which, and the conditions subject to which, treatment will not be provided under this Part;

(f) whether the Commission's prior approval of a particular kind or class of treatment is required;

(g) if the Commission's prior approval is required:

(i) the circumstances in which the Commission may exercise its power to give prior approval; and

(ii) the circumstances in which the Commission may exercise its power to give approval if the treatment was obtained without prior approval;

(h) both:

(i) kinds of treatment for the purposes of paragraph 287(2A)(b); and

(ii) the circumstances in which, and the extent to which, the Commission may accept financial responsibility for particular costs relating to that treatment (including amounts of subsidy payable under Part 2 of Chapter 4 of the *Aged Care Act 2024*).

Determination must be approved by the Minister

(2) A determination under subsection (1) has no effect unless the Minister has approved it in writing.

(3) A determination under subsection (1), so far as it relates to paragraph (1)(c), approved by the Minister and as in force from time to time is a ***pharmaceutical benefits determination***.

(4) Any other determination under subsection (1) approved by the Minister and as in force from time to time is a ***treatment determination***.

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Variation or revocation of determinations

(5) The Commission may, by written determination, vary or revoke a pharmaceutical benefits determination or treatment determination.

(6) A determination under subsection (5) has no effect unless the Minister has approved it in writing.

Legislative instruments

(6A) A determination under subsection (1) or (5) made by the Commission and approved by the Minister is a legislative instrument made by the Minister on the day on which the determination is approved.

Incorporation of other instruments

(6B) Despite subsection 14(2) of the *Legislation Act 2003*:

(a) a determination under subsection (1); or

(b) a determination under subsection (5) varying a pharmaceutical benefits determination or treatment determination;

may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

When treatment is provided as a private patient

(7) For the purposes of paragraph (1)(b), treatment is taken to be provided to a person as a private patient if:

(a) the treatment is provided to the person as a person who is a private patient of a hospital, for the purposes of the *Health Insurance Act 1973*; or

(b) the treatment is provided to the person by a medical specialist to whom the person has been referred but is not provided at a hospital.

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287 Provision of treatment

(1) The Commission may arrange for treatment to be provided to a person who is entitled to treatment under this Part in accordance with one or more of the following:

(a) a determination under section 284A;

(b) the arrangements made under section 285;

(c) a treatment determination under section 286.

(2) However, if a person who is entitled to treatment under this Part requires a particular kind or class of treatment that is not dealt with in the arrangements or a determination mentioned in subsection (1), then the person's entitlement is subject to the Commission's approval of the treatment (whether that approval is given before or after the treatment is provided).

(2A) If:

(a) the Commission is satisfied that an entity, other than the Commission, has arranged for the provision of treatment for a person who is entitled to treatment under this Part; and

(b) the treatment is of a kind mentioned in subparagraph 286(1)(h)(i) and specified in a treatment determination;

then the Commission may, in accordance with the treatment determination as it relates to subparagraph 286(1)(h)(ii), accept financial responsibility for particular costs in relation to that treatment (including amounts of subsidy payable under Part 2 of Chapter 4 of the *Aged Care Act 2024*).

(3) Nothing in this Part:

(a) imposes a duty on the Commission to arrange for treatment to be provided to a person outside Australia; or

(b) confers a right on a person to be provided with treatment outside Australia.

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287A Provision of services under the Coordinated Veterans' Care mental health pilot

(1) Despite any other provision of this Part, a person is entitled to services under the program established by the Commonwealth and known as the Coordinated Veterans' Care mental health pilot only if:

(a) the person is included in a class of persons determined in an instrument under subsection (2); and

(b) the Commission has determined, in writing, that this section applies to the person.

(2) The Commission may, by legislative instrument, determine a class of persons for the purposes of paragraph (1)(a).

(3) Despite subsection 14(2) of the *Legislation Act 2003*, an instrument under subsection (2) of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

(4) A determination under paragraph (1)(b) is not a legislative instrument.

287B Provision of services under the Veteran Suicide Prevention pilot

(1) A person is eligible to be provided with treatment under this Part, being treatment that is the provision of services under the program established by the Commonwealth and known as the Veteran Suicide Prevention pilot, if the person is included in a class of persons determined in an instrument under subsection (2).

(2) The Commission may, by legislative instrument, determine a class of persons for the purposes of subsection (1).

(3) Despite subsection 14(2) of the *Legislation Act 2003*, an instrument under subsection (2) of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without

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modification, any matter contained in an instrument or other writing as in force or existing from time to time.

287C Provision of counselling services and psychiatric assessment

(1) The Commission may, with the approval of the Minister, arrange for the provision of:

(a) counselling services for:

(i) members, former members and dependants of members and former members; and

(ii) a person in a class in respect of which a determination under paragraph 284A(1)(c) has been made; and

(iii) a person included in a class of persons specified in an instrument under subsection (2) of this section; and

(b) psychiatric assessment of a person in a class in respect of which a determination under paragraph 284A(1)(b) or (c) has been made.

(2) The Commission may, by legislative instrument, specify a class of persons for the purposes of subparagraph (1)(a)(iii).

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Part 4—Other compensation relating to treatment

Division 1—Simplified outline of this Part

288 Simplified outline of this Part

Division 1A of this Part provides for compensation for the cost of treatment in special circumstances. This includes treatment that a person reasonably obtains before the Commission determines that the person is entitled to treatment under Part 3 or if the person dies after receiving treatment.

Division 2 of this Part provides for compensation for costs incurred in some travel taken by a patient to obtain treatment. The Commission can also approve an attendant to accompany the patient and pay the attendant's travel costs. The costs of the patient's or attendant's accommodation can be paid if they have to stay at a place to obtain the treatment.

Division 3 of this Part provides for compensation for costs incurred by certain persons in transporting another person to a hospital etc. or a mortuary.

Division 4 provides for MRCA supplement for those who are entitled to treatment under Part 3 of this Chapter.

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Division 1A—Compensation for treatment obtained in special circumstances

288A Compensation for those entitled to treatment under Part 3

The Commonwealth is liable to pay compensation for the cost of treatment obtained for a person's injury or disease if:

(a) the person is entitled to treatment under Part 3 for the injury or disease; and

(b) the person obtains the treatment before any determination by the Commission that the person is entitled to the treatment under that Part; and

(c) it was reasonable for the person to obtain the treatment; and

(d) a claim for compensation in respect of the person has been made under section 319.

288B Compensation for treatment prior to a service death

The Commonwealth is liable to pay compensation for the cost of treatment obtained for a person's injury or disease if:

(a) the person dies from the injury or disease after obtaining the treatment; and

(b) the person's death is a service death for which the Commission has accepted liability; and

(c) it was reasonable for the person to obtain the treatment in the circumstances; and

(d) a claim for compensation has been made under section 319 by the person's legal personal representative.

288C Compensation in other special circumstances

The Commonwealth is liable to pay compensation for the cost of treatment obtained for a person's service injury or disease if:

(a) the Commission has accepted liability for the service injury or disease; and

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(b) the Commission is satisfied that special circumstances exist in relation to the person and the treatment obtained; and

(c) a claim for compensation in respect of the person has been made under section 319.

288D Relationship of this Part with other compensation provisions

(1) The Commonwealth is not liable to pay compensation under section 288A, 288B or 288C for the cost of treatment if the Commonwealth is liable to pay compensation in respect of the treatment under a section in another Chapter of this Act.

(2) If a person would be entitled to compensation for the cost of treatment under more than one section in this Division, then the Commonwealth is only liable to pay compensation in respect of the treatment under one of those sections.

288E No compensation if aggravated injury or disease ceases to be aggravated etc.

The Commonwealth is not liable to pay compensation for the cost of treatment obtained for an aggravated injury or disease if, at the time of the treatment, the aggravation or material contribution had ceased.

288F Amount of treatment compensation

(1) The Commission must determine the amount of compensation payable under section 288A, 288B or 288C. The amount must be the amount the Commission considers reasonable for the cost of the treatment for a person's injury or disease. However, the amount must not be more than the amount actually incurred in obtaining the treatment.

Note: The amount determined by the Commission must not take into account increases in the cost of a particular treatment after that treatment has been obtained.

(2) The amount of compensation for treatment includes the amount reasonably incurred (whether paid or payable) in the necessary

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replacement or repair of a medical aid used by the person. This may include any reasonable fees or charges of a practitioner, or other qualified person, for a consultation, examination, prescription, or other service that is reasonably rendered in connection with the replacement or repair.

288G Whom treatment compensation is payable to

(1) Compensation under section 288A, 288B or 288C for the cost of the treatment is payable to:

(a) the person who made the claim for compensation; or

(b) if that person so directs:

(i) the person who provided the treatment; or

(ii) any other person who incurred the cost of the treatment.

Note: A special rule applies if there is a trustee under section 432.

(2) A payment under section 288A, 288B or 288C to a person who provided the treatment discharges any liability of any other person for the cost of the treatment to the extent of the payment.

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Division 2—Compensation for patients' and attendants' journey and accommodation costs

289 Definition of *compensable treatment*

In this Division:

compensable treatment means:

(a) treatment to which a person is entitled under Part 3; or

(b) treatment in respect of which compensation is payable under Division 1A of this Part; or

(c) treatment in respect of which compensation is payable under section 16 of the DRCA; or

(d) treatment to which a person is entitled under Part V of the VEA.

290 Compensation for journey costs relating to treatment

Compensation for costs of a patient's journey

(1) The Commonwealth is liable to pay compensation for any costs reasonably incurred if:

(a) the costs are incurred in respect of a journey that is made by a person that is necessary for the person to obtain compensable treatment for an injury or disease of the person; and

(b) any one or more of the following applies:

(i) if the journey is by ambulance services—the person's injury or disease reasonably requires using those services; or

(ii) the journey is by public transport; or

(iii) if the journey is by means other than public transport or ambulance services—it is unreasonable for the person to use public transport having regard to the nature of the person's injury or disease, or public transport is unavailable; and

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(c) a claim for compensation in respect of the person has been made under section 319.

Note 1: Section 289 defines ***compensable treatment***.

Note 2: This subsection might be affected by the following provisions:
(a) section 292 (journeys etc. outside Australia);
(b) section 293 (amount of compensation).

Compensation for costs of an attendant's journey

(2) The Commonwealth is liable to pay compensation for any costs reasonably incurred if:

(a) the Commission approves a person (the ***attendant***) to accompany another person (the ***patient***) on a journey that is necessary for the patient to obtain compensable treatment for an injury or disease of the patient; and

(b) the costs are incurred in respect of the attendant's journey; and

(c) any one or more of the following applies:

(i) if the journey is by ambulance services—the person's injury or disease reasonably requires using those services; or

(ii) the journey is by public transport; or

(iii) if the journey is by means other than public transport or ambulance services—it is unreasonable for the person to use public transport having regard to the nature of the person's injury or disease, or public transport is unavailable; and

(d) a claim for compensation in respect of the attendant has been made under section 319.

Note 1: Section 289 defines ***compensable treatment***.

Note 2: This subsection might be affected by the following provisions:
(a) section 292 (journeys etc. outside Australia);
(b) section 293 (amount of compensation).

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291 Compensation for accommodation relating to treatment

Compensation for the costs of a patient's accommodation

(1) The Commonwealth is liable to pay compensation for any costs reasonably incurred if:

(a) a person makes a journey that is necessary for the person to obtain compensable treatment for an injury or disease of the person; and

(b) it is necessary for the person to remain at the place to which the journey was made to obtain the treatment; and

(c) the costs are incurred in respect of the person's accommodation at that place; and

(d) a claim for compensation in respect of the person has been made under section 319.

Note 1: Section 289 defines ***compensable treatment***.

Note 2: This subsection might be affected by the following provisions:
(a) section 292 (journeys etc. outside Australia);
(b) section 294 (amount of compensation).

Compensation for the costs of an attendant's accommodation

(2) The Commonwealth is liable to pay compensation for any costs reasonably incurred if:

(a) the Commission approves a person (the ***attendant***) to accompany another person (the ***patient***) on a journey that is necessary for the patient to obtain compensable treatment for an injury or disease of the patient; and

(b) it is necessary for the patient and the attendant to remain at the place to which the journey was made to obtain that treatment; and

(c) the costs are incurred in respect of the attendant's accommodation at that place; and

(d) a claim for compensation in respect of the attendant has been made under section 319.

Note 1: Section 289 defines ***compensable treatment***.

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Note 2: This subsection might be affected by the following provisions:
(a) section 292 (journeys etc. outside Australia);
(b) section 294 (amount of compensation).

291A Scheme may provide for advance payments

(1) The Commission may, in writing, determine a scheme for and in relation to the making of advance payments to persons in respect of compensation a person is expected to become entitled to be paid under section 290 or 291 in respect of a journey or accommodation.

(2) Without limiting subsection (1), the scheme may provide for the following:
(a) how applications for advance payments are made under the scheme;
(b) investigating and determining those applications.

Scheme must be approved by the Minister

(3) The scheme has no effect unless the Minister has approved it in writing.

Variation or revocation of scheme

(4) The Commission may, by written determination, vary or revoke the scheme that is in force under this section.

(5) A determination under subsection (4) has no effect unless the Minister has approved it in writing.

Legislative instruments

(6) A determination under subsection (1) or (4) made by the Commission and approved by the Minister is a legislative instrument made by the Minister on the day on which the determination is approved.

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292 No compensation for journeys or accommodation outside Australia

The Commonwealth is not liable to pay compensation under section 290 or 291 for:

(a) costs incurred in respect of a journey that is made outside Australia for the main purpose of obtaining treatment; or

(b) costs incurred in respect of accommodation required during such a journey.

293 Amount of compensation for journeys

(1) The amount of compensation that the Commonwealth is liable to pay under section 290 (compensation for journeys) is the amount determined by the Commission to be the amount reasonably incurred in respect of the journey.

(2) In determining an amount under subsection (1), the Commission may determine the amount of compensation using the following formula:

Specified rate per kilometre × Length of the journey in kilometres

Note: For example, the Commission might use the formula if a person used a private vehicle to make a journey, but not if a person flew on a commercial airline.

(3) In this section:

length of the journey in kilometres means:

(a) if only subparagraph 290(1)(b)(iv) or (2)(c)(iv) applies—the number of whole kilometres the Commission determines to be the reasonable length of the journey that it was necessary to make; and

(b) otherwise—the length of the journey in kilometres.

specified rate per kilometre means the rate per kilometre specified in an instrument under subsection 16(6) of the S*afety,*

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Rehabilitation and Compensation Act 1988 (as that instrument is in force from time to time).

294 Amount of compensation for accommodation

The amount of compensation that the Commonwealth is liable to pay under section 291 (compensation for accommodation) is the amount reasonably incurred in respect of the accommodation.

295 Matters to be considered in journey and accommodation compensation claims

In determining issues arising under this Division, the Commission must have regard to the following matters:

(a) the places where appropriate treatment was available to the person;
(b) the means of transport available to the person for the journey;
(c) the means of transport appropriate for the person to take for the journey;
(d) the routes by which the person could have travelled;
(e) the accommodation available to the person at the place to which the journey was made;
(f) any other relevant matters.

296 Whom compensation is payable to

(1) Compensation under section 290 or 291 for costs reasonably incurred is payable to:
  (a) the person who made the claim for compensation; or
  (b) if that person so directs:
    (i) a person who provided services in connection with the journey or accommodation; or
    (ii) any other person who incurred the cost of services in connection with the journey or accommodation.

Note: A special rule applies if there is a trustee under section 432.

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(2) A payment under section 290 or 291 to a person who provided services in connection with the journey or accommodation discharges any liability of any other person for the cost of those services to the extent of the payment.

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Division 3—Compensation for transportation costs

297 Compensation for other person's transportation costs

The Commonwealth is liable to pay compensation for any costs reasonably incurred by a person (the ***first person***) if:

(a) the first person reasonably incurred those costs in connection with transporting another person to:

(i) a hospital or other institution; or

(ii) a mortuary;

from a place where that other person had sustained an injury, contracted a disease or died; and

(b) either:

(i) that injury, disease or death is a service injury, disease or death in respect of which the Commission has accepted liability; or

(ii) the other person is entitled to treatment under section 284 in respect of the injury or disease; and

(c) a claim for compensation in respect of the first person has been made under section 319.

Note: The Commission is taken to have accepted liability for an injury or disease in certain circumstances (see section 24A).

298 Amount of transportation costs

The amount of compensation that the Commonwealth is liable to pay under section 297 is the amount reasonably incurred by the person.

299 Whom compensation is payable to

Compensation under section 297 is payable to the person.

Note: A special rule applies if there is a trustee under section 432.

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Division 4—MRCA supplement for members, former members and dependants

300 Eligibility for MRCA supplement

A person is eligible for MRCA supplement under this section if the person is entitled to treatment under Part 3 of this Chapter.

Note 1: Section 301 sets out some circumstances when MRCA supplement is not payable.

Note 2: MRCA supplement that is payable in relation to treatment provided under subsection 280A(1) is paid for with money appropriated under subsection 160(2) of the DRCA.

301 MRCA supplement not payable in some circumstances

People leaving Australia otherwise than temporarily

(1) A person who leaves Australia otherwise than temporarily is not eligible for MRCA supplement under section 300 after the day on which he or she left Australia.

Temporary absence from Australia

(2) A person who is temporarily absent from Australia and has been so absent for more than 26 weeks is not eligible for MRCA supplement under section 300 after the first 26 weeks of the absence.

When a person becomes eligible for MRCA supplement after leaving Australia

(3) The person mentioned in subsections (1) and (2) again becomes eligible to receive MRCA supplement under section 300 on the later of the following days:
  (a) the day on which the person returns to Australia; or
  (b) the day on which the person notifies the Commission of his or her return to Australia.

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When MRCA supplement is not payable

(4) Even though a person is eligible for MRCA supplement under section 300, the supplement is not payable to the person if:

(a) he or she is receiving veterans supplement under section 118A of the VEA; or

(b) he or she is receiving a pharmaceutical allowance under the *Social Security Act 1991*; or

(c) he or she is a wholly dependent partner of a deceased member; or

(d) he or she is receiving a social security payment (within the meaning of the *Social Security Act 1991*) for which a pension supplement amount (within the meaning of that Act) is used to work out the rate of the payment; or

(e) he or she is receiving a service pension (within the meaning of the VEA); or

(ea) he or she is receiving a veteran payment made under an instrument made under section 45SB of the VEA; or

(f) he or she is receiving pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or

(g) he or she is receiving pharmaceutical supplement under Part 4 of the *Treatment Benefits (Special Access) Act 2019*.

(5) Paragraph (4)(c) does not apply to a person who is a wholly dependent partner of a deceased member if:

(a) the member died before 20 September 2009; and

(b) at any time and in respect of the member's death, the person chose under section 236 to convert a percentage of the weekly amount mentioned in paragraph 234(1)(b) to a lump sum.

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302 Rate of MRCA supplement

The rate of MRCA supplement that is payable under section 300 is the rate of veterans supplement that is payable from time to time under section 118C of the VEA.

303 Payment of MRCA supplement

MRCA supplement generally payable fortnightly

(1) Unless a determination under subsection (2) is in force in relation to the person, a person's MRCA supplement under section 300 is payable on each pension payday (within the meaning of subsection 5Q(1) of the VEA) on which:

(a) the person is eligible for the MRCA supplement; and

(b) the MRCA supplement is payable to the person.

Note: If there is a trustee under section 432, then the MRCA supplement would be payable to the trustee.

MRCA supplement may be payable weekly

(2) The Commission may determine, in writing, that a person's MRCA supplement under section 300 is payable in 2 payments (the ***part payments***) if the person is a member of a class specified under subsection (4).

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

(4) The Commission may, by legislative instrument, specify a class of persons for the purposes of subsection (2).

(5) The first of the part payments:

(a) is an amount equal to one half of the rate of veterans supplement that is payable from time to time under section 118C of the VEA; and

(b) is payable on each Thursday that is not a pension payday (within the meaning of subsection 5Q(1) of that Act) on which:

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(i) the person is eligible for the MRCA supplement; and
(ii) the MRCA supplement is payable to the person.

Note: If there is a trustee under section 432, then the MRCA supplement would be payable to the trustee.

(6) The other of the part payments:
(a) is an amount equal to one half of the rate of veterans supplement that is payable from time to time under section 118C of the VEA; and
(b) is payable 7 days after the first of the part payments is payable to the person.

Note: If there is a trustee under section 432, then the MRCA supplement would be payable to the trustee.

(7) If a person's MRCA supplement under section 300 is payable in part payments, it is taken for the purposes of this Act that:
(a) a single supplement is payable on each pension payday (within the meaning of subsection 5Q(1) of the VEA); and
(b) that supplement is payable when the last of the part payments is, or is to be, made; and
(c) the amount of that supplement is equal to the total of the part payments.

(8) However, sections 426 and 431 (about deductions of amounts) apply as if each of the part payments were a separate supplement.

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Part 5—Offences relating to treatment under this Chapter

304 Simplified outline of this Part

This Part contains offences relating to treatment provided or compensated under this Chapter.

The offences relate to:

(a) false or misleading statements or documents given in respect of treatment; and

(b) medical service providers who cause or threaten detriment to others; and

(c) medical service providers who bribe practitioners in respect of treatment; and

(d) practitioners who accept bribes in respect of treatment; and

(e) pathology practitioners who provide payments or services to other practitioners with whom they have arrangements.

There are other offence provisions in the *Criminal Code* that might also apply (such as in Parts 7.3 (fraudulent conduct), 7.4 (false or misleading statements) and 7.7 (forgery)).

The *Criminal Code* and the *Crimes Act 1914* also contain provisions that are relevant to offences generally.

305 Definitions

(1) In this Part:

medical service provider means a person:

(a) who is a pathology practitioner; or

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(b) who is a proprietor of premises at which pathology services are rendered; or
(c) who is a proprietor of a hospital or other institution that is not operated by the Commonwealth, a State or a Territory; or
(d) who is acting on behalf of a proprietor of such a hospital or other institution.

pathology practitioner means a person in respect of whom there is in force an undertaking given by the person, and accepted by the Minister, under section 23DC of the *Health Insurance Act 1973*.

pathology service has the meaning given by subsection 3(1) of the *Health Insurance Act 1973*.

proprietor means:
(a) in relation to premises—the person, authority or body of persons having effective control of the premises (whether or not that person, authority or body is the holder of an estate or interest in the premises); and
(b) in relation to a hospital or other institution—the proprietor (within the meaning of paragraph (a)) of the premises occupied by the hospital or other institution.

treatment under this Chapter includes treatment in respect of which compensation is paid under Division 1A of Part 4 of this Chapter.

(2) In this Part, a person engages in conduct ***dishonestly*** if:
(a) the person engages in conduct; and
(b) the conduct is dishonest according to the standards of ordinary people; and
(c) the defendant knows the conduct is dishonest according to the standards of ordinary people.

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306 Offence for false or misleading statements or documents relating to treatment

(1) A person commits an offence if:

(a) any of the following applies:

(i) the person makes a statement (whether oral or in writing);

(ii) the person issues or presents a document;

(iii) the person authorises a statement to be made or a document to be issued or presented; and

(b) the statement or document is false or misleading in a material particular; and

(c) the statement or document is capable of being used in connection with:

(i) a claim for compensation under Part 4; or

(ii) a claim by a person for payment for treatment provided by the person under Part 3.

Penalty: 20 penalty units.

(2) Subsection (1) is an offence of strict liability.

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

(3) Subsection (1) does not apply if:

(a) the person did not know, and could not reasonably be expected to have known, that the statement or document was false or misleading in a material particular; or

(b) the person did not know, and could not reasonably be expected to have known, that the statement or document was capable of being used in connection with:

(i) a claim for compensation under Part 4; or

(ii) a claim by a person for payment for treatment provided by the person under Part 3.

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

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(4) Section 9.2 of the *Criminal Code* (mistake of fact) does not apply in relation to the matters mentioned in subsection (3).

(5) Despite section 15B of the *Crimes Act 1914*, a prosecution for an offence under this section can be commenced at any time within 3 years after the offence is committed.

307 Offence for medical service providers causing detriment to others

A person commits an offence if:

(a) the person is a medical service provider; and

(b) the person engages in conduct or omits to engage in conduct; and

(c) the conduct or omission causes detriment to another person; and

(d) the person engages in the conduct or omits to engage in the conduct intending:

(i) the conduct or omission to cause detriment to the other person; and

(ii) to encourage the other person to request a pathology service in respect of treatment provided under this Chapter; and

(e) the other person does not consent to the conduct or omission.

Penalty: 120 penalty units or imprisonment for 2 years.

308 Offence for medical service providers threatening detriment

(1) A person commits an offence if:

(a) the person is a medical service provider; and

(b) the medical service provider makes a threat to another person to cause detriment to the other person or a third person; and

(c) the medical service provider is reckless as to causing the other person or the third person to fear that the threat will be carried out; and

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(d) the medical service provider makes the threat intending to encourage the other person to request a pathology service in respect of treatment provided under this Chapter.

Penalty: 120 penalty units or imprisonment for 2 years.

(2) For the purposes of subsection (1), a threat may be:
(a) express or implied; or
(b) conditional or unconditional.

(3) In a prosecution for an offence against subsection (1), it is not necessary to prove that the person actually feared that the threat would be carried out.

309 Offence for bribery by medical service providers

A person commits an offence if:
(a) the person is a medical service provider; and
(b) the person dishonestly:
(i) provides a benefit to another person; or
(ii) causes a benefit to be provided to another person; or
(iii) offers or promises to provide a benefit to another person; or
(iv) causes an offer or a promise to provide a benefit to be made to another person; and
(c) the person does so intending to encourage the other person to request a pathology service in respect of treatment provided under this Chapter.

Penalty: 120 penalty units or imprisonment for 2 years.

310 Offence for practitioners receiving bribes etc.

A person commits an offence if:
(a) the person is a practitioner; and
(b) the person dishonestly:

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(i) asks for a benefit for himself or herself, or for another person; or

(ii) receives or obtains a benefit for himself or herself, or for another person; or

(iii) agrees to receive or obtain a benefit for himself or herself, or for another person; and

(c) the person does so intending:

(i) that treatment provided by him or her under this Chapter will be influenced; or

(ii) to induce, foster or sustain a belief that such treatment will be influenced.

Penalty: 120 penalty units or imprisonment for 2 years.

311 Offence for pathology practitioners making payments to requesting practitioners

(1) A person commits an offence if:

(a) the person is a pathology practitioner; and

(b) another practitioner (the ***requesting practitioner***) requests the pathology practitioner to provide pathology services to a person (the ***patient***); and

(c) the patient is entitled to treatment under this Chapter; and

(d) the pathology practitioner provides those services; and

(e) the pathology practitioner makes a payment (either directly or indirectly) to the requesting practitioner either:

(i) in respect of other services provided by the requesting practitioner to the patient in connection with the request; or

(ii) in respect of the use of the requesting practitioner's staff in connection with taking pathology specimens from the patient.

Penalty: 120 penalty units or imprisonment for 2 years.

(2) Strict liability applies to paragraph (1)(c).

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

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312 Offence for pathology practitioners providing pathology services to persons with whom they have arrangements

(1) A person commits an offence if:

(a) the person is a pathology practitioner; and

(b) the person has entered an arrangement with another practitioner to share the cost of:

(i) employing staff; or

(ii) buying, renting or maintaining items of equipment;

(whether or not the arrangement involves paying money or providing other consideration); and

(c) the other practitioner requests the person to provide pathology services in respect of treatment under this Chapter; and

(d) the person provides those services while the arrangement is in force.

Penalty: 120 penalty units or imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person is a pathology practitioner; and

(b) the pathology practitioner has entered an arrangement with a practitioner:

(i) to share a particular space in a building; or

(ii) for one of them to provide space in a building for the other to use or occupy; or

(iii) for one of them to permit the other to use or occupy the building; and

(c) the charges payable under the arrangement are not charges fixed at normal commercial rates; and

(d) the practitioner requests the pathology practitioner to provide pathology services in respect of treatment under this Chapter; and

(e) the pathology practitioner provides those services while the arrangement is in force.

Penalty: 120 penalty units or imprisonment for 2 years.

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313 Offence for providing staff to be used in pathology services

A person commits an offence if:

(a) the person is a pathology practitioner; and

(b) the person provides nursing or other staff at the premises of another practitioner (whether the staff are present full-time, part-time or from time to time); and

(c) the person intends the staff to be used in taking pathology specimens in respect of treatment under this Chapter.

Penalty: 120 penalty units or imprisonment for 2 years.

314 Counselling statements inadmissible as evidence

(1) This section applies if:

(a) a person (the ***treatment provider***) has provided treatment under this Chapter; and

(b) the treatment provider has been counselled by a staff member assisting the Commission with respect to providing treatment under this Chapter; and

(c) the treatment provider makes a statement during the counselling.

(2) The statement is inadmissible as evidence against the treatment provider in proceedings prosecuting him or her for an offence mentioned in subsection (3) unless:

(a) the treatment provider consents to the statement being admitted as evidence in the proceedings; or

(b) both of the following apply:

(i) evidence of another statement made by the treatment provider during such counselling is admitted on behalf of the provider;

(ii) evidence of the statement mentioned in paragraph (1)(c) is adduced to refute evidence of that other statement.

(3) For the purposes of subsection (2), these are the offences:

(a) an offence under this Part;

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(b) an offence against:
(i) section 6 of the *Crimes Act 1914* (accessory after the fact); or
(ii) section 11.1, 11.4 or 11.5 of the *Criminal Code* (attempt, incitement or conspiracy);
that relates to an offence under this Part.

315 Recovery of amounts paid because of false or misleading statements

(1) This section applies if:
(a) an amount is paid under this Chapter purportedly by way of compensation or payment to a person for treatment provided by the person; and
(b) as a result of making a false or misleading statement, the amount paid exceeds the amount (if any) that should have been paid.

(2) The amount of the excess is recoverable as a debt due to the Commonwealth from:
(a) the person by or on behalf of whom the statement was made; or
(b) the estate of that person.

(3) Subsection (2) applies whether or not:
(a) the amount was paid to the person by or on behalf of whom the statement was made; and
(b) any person has been convicted of an offence in relation to the making of the statement.

316 Interest payable on amounts paid because of false or misleading statements

(1) This section applies if:
(a) an amount (the ***principal sum***) is recoverable as a debt due to the Commonwealth from a person or estate under section 315; and

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(b) the Commission has served a notice on the person or estate (as the case requires) claiming the amount as a debt due to the Commonwealth; and

(c) an arrangement has been entered into between the Commission and the person or estate (as the case requires) to repay the principal sum within the following period (the ***relevant period***):

(i) the period of 3 months from the day the notice is served;

(ii) such longer period as the Commission allows; and

(d) there has been a default (whether before or after the end of that period) in repaying all or part of the principal sum as required by the arrangement.

(2) This section applies if:

(a) an amount (the ***principal sum***) is recoverable as a debt due to the Commonwealth from a person or estate under section 315; and

(b) the Commission has served a notice on the person or estate (as the case requires) claiming the amount as a debt due to the Commonwealth; and

(c) an arrangement to repay the principal sum has not been entered into within the following period (the ***relevant period***):

(i) the period of 3 months from the day the notice is served;

(ii) such longer period as the Commission allows; and

(d) all or part of the principal sum remains unpaid.

(3) Interest is payable on the amount of the principal sum that remains unpaid from time to time.

(4) The interest is payable from:

(a) the day after the end of the relevant period; or

(b) such other later day ordered by a court in any proceedings instituted by the Commonwealth to recover an amount due under this section.

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(5) The interest is payable at the rate prescribed from time to time for the purposes of subsection 129AC(2) of the *Health Insurance Act 1973*.

(6) The interest is recoverable as a debt due to the Commonwealth from the person or estate (as the case requires).

317 Reduction in payments because of previous overpayments

(1) The Commission may reduce the amount of any payment that becomes payable to a person if:

(a) an amount has previously been paid under this Chapter to the person purportedly by way of compensation or payment for treatment provided; and

(b) the amount paid exceeds the amount (if any) that should have been paid; and

(c) the person agrees to the reduction.

(2) The amount of the reduction must not exceed:

(a) if the Commission has not previously reduced a payment under this section—the amount of the excess; and

(b) otherwise—the amount by which the sum of all amounts of excess under subsection (1) exceeds the sum of all amounts recovered under this section.

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Chapter 7—Claims

Part 1—Making a claim

Division 1—Simplified outline of this Part

318 Simplified outline of this Part

Most benefits under this Act require a claim to have been made under section 319 in respect of a person. This Part sets out the rules that apply in making claims.

A claim can be made for:

(a) acceptance of liability for an injury, disease or death; or

(b) acceptance of liability for the loss of or damage to a member's medical aid;

(c) compensation.

The claim can be made by a current or former member who suffered a service injury or disease, a dependant of a deceased member, or a person who is entitled to compensation. A claim can also be made on behalf of such a person.

Once a claim is made, the Commission must investigate the claim. As part of this investigation, the Commission can assess the needs of a person who has made a claim for acceptance of liability for a service injury or disease (including by requiring the person to undergo an examination).

The Commission can require information or documents that are relevant to a claim to be provided. The Chief of the Defence Force or a person who has made a claim can require the Commission to provide information or documents that are relevant to a claim.

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Division 2—Making a claim

319 Making a claim

(1) A claim may be made under this section for one or more of the following:

(a) acceptance of liability by the Commission for a service injury sustained by a person or a service disease contracted by a person;

(b) acceptance of liability by the Commission for the service death of a person;

(c) acceptance of liability by the Commission for the loss of, or damage to, a member's medical aid;

(d) compensation.

Note 1 Section 320 sets out who may make the claim.

Note 2: If a claim or application that was made under the DRCA or the VEA in respect of an injury or disease, or in respect of a funeral, has been refused, a new claim may be made under this section in respect of the same injury or disease, or the same funeral, provided the new claim is supported by additional evidence (see subsections 322(5B) and (5D)).

(2) A claim under paragraph (1)(a), (b) or (c) must:

(a) be in writing; and

(b) be given to the Commission; and

(c) satisfy the requirements (if any):

(i) prescribed by the regulations; or

(ii) determined in writing by the Commission;

as to the form and content of claims, or claims of that kind.

Note: Section 323 sets out when a claim is taken to have been given to the Commission.

(2A) A claim under paragraph (1)(d) must:

(a) be in writing and be given to the Commission; or

(b) be made orally to the Commission.

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Note: Section 323 sets out when a claim is taken to have been given to the Commission.

(3) The Commission must give a copy of a claim under paragraph (1)(a), (b) or (c) that has been made in respect of a person (except a claim made by the Chief of the Defence Force on behalf of the person) to the Chief of the Defence Force if:

(a) the claim is for the acceptance of liability by the Commission for a service injury sustained by the person, a service disease contracted by the person or the person's service death; and

(b) the person was a member of the Defence Force:

(i) for a claim relating to a service injury or disease—at the time the claim was made; or

(ii) for a claim relating to a service death—at the time of death.

(4) The Commission must advise the Chief of the Defence Force of the making of a claim under paragraph (1)(d) in respect of a person if:

(a) the claim is for compensation under Part 2 of Chapter 4 (permanent impairment); and

(b) the person was a member of the Defence Force at the time the claim was made.

320 Who may make a claim

(1) A claim under subsection 319(1) may be made by:

(a) if paragraph 319(1)(a) applies—the person who sustained the injury or contracted the disease; or

(b) if paragraph 319(1)(b) applies—a person who is a dependant of the person who died; or

(c) if paragraph 319(1)(c) applies—the member whose medical aid is lost or damaged; or

(d) if paragraph 319(1)(d) applies—the person who is entitled to the compensation.

Note: A special rule applies in respect of claims for the cost of funerals and compensation for treatment for members who later die (see sections 266, 268AB, 268AC and 288B).

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(2) Alternatively, a claim may be made on behalf of such a person:
  (a) with the person's approval; or
  (b) by the person's legal personal representative; or
  (c) if the person is unable, because of physical or mental incapacity, to approve someone to make the claim on his or her behalf—by another person approved by the Commission; or
  (d) if the person is under the age of 18 years:
    (i) by a parent or guardian of the person; or
    (ii) by someone approved by a parent or guardian of the person; or
    (iii) if there is not a parent or guardian of the person alive, or willing and able to make, or approve someone to make such a claim on behalf of the person—by another person approved by the Commission.

(2A) Without limiting paragraph (2)(a), the person may approve the Chief of the Defence Force making a claim on behalf of the person if:
  (a) the person is a member of the Defence Force; and
  (b) the claim is for acceptance of liability by the Commission for a service injury sustained by the person or a service disease contracted by the person.

(2B) However, if the person approves the Chief of the Defence Force making a claim as mentioned in subsection (2A), the Chief of the Defence Force is not required to make the claim on behalf of the person.

(3) The Commission may approve another person to make a claim on a person's behalf as mentioned in paragraph (2)(c) or subparagraph (2)(d)(iii) only if:
  (a) the person has no legal personal representative; or
  (b) the Commission is satisfied that:
    (i) the person's legal personal representative has been notified that the legal personal representative has, or may have, a right to make a claim; and

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(ii) the person's legal personal representative has refused, or failed within a reasonable time after having been so notified, to make the claim.

321 Survival of claims and of right to claim

Claim made before death

(1) A claim made before the death of the person who made the claim (including a claim made by a dependant of a deceased member) continues to have effect after the death of that person.

(2) If a person makes a claim under section 319 before the person's death, the person's legal personal representative can make a claim for any compensation (including compensation under Part 2 of Chapter 4 (permanent impairment)) that could have been payable to the person up to the date of death.

Note 1: The legal personal representative can choose to convert compensation for permanent impairment to a lump sum in certain circumstances (see subsection 78(7)).

Note 2: The legal personal representative of a deceased partner cannot convert compensation for a member's death to a lump sum (see section 236).

No claim made before death

(3) If a person who is entitled to make a claim under this Act dies before making the claim, the claim may be made on the person's behalf by the person's legal personal representative.

(4) The person's legal personal representative can make a claim for any compensation that could have been payable to the person up to the date of death, except compensation under Part 2 of Chapter 4 (permanent impairment).

Note: A payment of compensation in respect of a deceased person normally forms part of the estate of the person (see section 436).

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322 No new claim before earlier claim finally determined

Claim for acceptance of liability

(1) A claim for acceptance of liability for a service injury, disease or death, or the loss of or damage to a medical aid, must not be made if another claim for acceptance of liability for that injury, disease, death, loss or damage has not yet been finally determined.

(3) Another claim for acceptance of liability for that service injury, disease or death, or loss of or damage to a medical aid, must be supported by additional evidence.

Claim for compensation

(4) A claim for compensation must not be made if another claim for compensation for the same matter has not yet been finally determined.

(5) Another claim for compensation for the same matter must be supported by additional evidence.

Claims under other Acts

(5A) A claim must not be made under this Act in respect of an injury or disease if:

(a) before the date of commencement, a claim was made under the DRCA or the VEA in respect of the same injury or disease; and

(b) that claim has not yet been finally determined.

(5B) If:

(a) before the date of commencement, a claim was made under the DRCA or the VEA in respect of an injury or disease; and

(b) that claim has been refused (whether before or after that date);

a subsequent claim under this Act in respect of the same injury or disease must be supported by additional evidence.

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(5C) A claim for compensation under Part 5 of Chapter 5 in respect of a funeral must not be made under this Act if:

(a) before the date of commencement, a claim or application was made under the DRCA or the VEA in respect of the same funeral; and

(b) that claim or application has not yet been finally determined.

(5D) If:

(a) before the date of commencement, a claim or application was made under the DRCA or the VEA in respect of a funeral; and

(b) that claim or application has been refused (whether before or after that date);

a subsequent claim for compensation under Part 5 of Chapter 5 of this Act in respect of the same funeral must be supported by additional evidence.

When a claim is finally determined

(6) For the purposes of this section, a claim is finally determined when either:

(a) a decision that has been made in respect of the claim is not subject to any form of reconsideration or review; or

(b) a decision that has been made in respect of the claim was subject to some form of reconsideration or review, but the period within which such a reconsideration or review could be instituted has ended without a reconsideration or review having been instituted.

323 Giving claims and documents to the Commission

(1) This section regulates the lodgment of claims and other documents under this Act.

(2) A claim or other document (other than a claim or other document that is approved by the Commission for electronic lodgment and that is transmitted electronically or a claim that is made orally):

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(a) is taken to have been given to the Commission only if the claim or other document is:

(i) lodged at a place within or outside Australia approved by the Commission for the purposes of this subsection; or

(ii) delivered to a person approved by the Commission for the purposes of this subsection; and

(b) is taken to have been so given on the day on which it is received at that place or delivered to that person.

(3) A claim or other document that is approved by the Commission for electronic lodgment and that is transmitted electronically:

(a) is taken to have been given to the Commission only if the claim or document is transmitted electronically in a manner, and to an electronic address, approved by the Commission for the purposes of this subsection in relation to claims or documents of that kind; and

(b) is taken to have been so given on the day on which it is received at that electronic address.

(4) Claims and other documents transmitted electronically other than in a manner approved by the Commission, or to an electronic address other than an electronic address approved by the Commission, are treated as not having been given to the Commission.

(5) A claim covered by subsection (2) or (3) is taken to have been made on the day on which, under subsection (2) or (3), it is taken to have been given to the Commission.

(5A) A claim made orally to the Commission is taken to have been given to the Commission on the day on which the claim was made.

(6) If a provision of this Act requires any material to be lodged in support of a claim or other document, that supporting material:

(a) unless paragraph (b) applies—may be lodged in accordance with this section in the same manner as the claim or other document to which it relates; and

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(b) if the supporting material is not appropriate to be lodged in the same manner as the claim or other document to which it relates—may be lodged in such other manner contemplated by this section as the Commission approves.

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Division 3—What happens after a claim is made

Subdivision A—Investigation of claims

324 Investigation by the Commission

(1) If a claim is given to the Commission in accordance with section 323, the Commission must investigate the matters to which the claim relates.

(2) Subsection (1) does not require the Commission to investigate matters relating to whether an injury or disease is attributable to defence service if the presumption in subsection 27A(1) or (2) is relied on for the purposes of determining that the injury or disease is a service injury or a service disease, as the case may be.

Note: Subsections 27A(1) and (2) contain a presumption that certain injuries and diseases are attributable to defence service unless the contrary is established.

Subdivision B—Needs assessments

325 When the Commission may or must carry out a needs assessment

(1) The Commission may carry out an assessment of a person's needs at any time after the Commission accepts liability for a service injury or disease of the person.

Note: Section 326 sets out some matters that are considered in an assessment of a person's needs.

(2) However, the Commission must carry out an assessment of a person's needs before determining a claim for compensation in respect of the person's injury or disease.

Note: Subsection (2) applies even if the Commission is taken to have accepted liability for the person's injury or disease because of the operation of section 24A.

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326 Assessment of a person's needs

For the purposes of section 325, an assessment of a person's needs may include, but is not limited to, an assessment of any or all of the following:

(a) whether an assessment of the person's capacity for rehabilitation should be conducted under section 44;

(b) whether the person would be entitled to any compensation or treatment under this Act;

(c) the person's medical needs, including but not limited to any treatment (including ongoing treatment) that the person needs or is likely to need.

Subdivision C—Medical examinations

328 Power to require medical examination

(1) This section applies if a claim is made under section 319 by or on behalf of a person who is member or a former member.

(2) The Commission may, at any time after the claim is made, require the person to undergo an examination by one medical practitioner nominated by the Commission.

(3) The Commonwealth is liable to pay the cost of conducting the examination.

(4) The Commonwealth is liable to pay compensation to the person for any costs the Commission determines are reasonably incurred by the person:

(a) in making a necessary journey in connection with the examination; or

(b) in remaining, for the purpose of the examination, at a place to which the person has made a journey for that purpose.

(5) In making a determination under subsection (4), the Commission must have regard to:

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(a) the means of transport available to the person for the journey; and
(b) the route or routes by which the person could have travelled; and
(c) the accommodation available to the person.

(6) A person must not be required to undergo an examination under this section at more frequent intervals than are specified by the Minister by legislative instrument.

329 Consequences of failure to undergo an examination

(1) If the Commission requires a person to undergo an examination under subsection 328(2), and the person:
(a) refuses or fails to undergo the examination; or
(b) in any way obstructs the examination;
the Commission may determine that the person's right to compensation (but not to treatment or compensation for treatment under Chapter 6) under this Act is suspended until the examination takes place.

(2) A determination under subsection (1) must not be made in relation to a refusal or failure to undergo the examination if, before the time fixed for the examination, the person gives to the Commission evidence of a reasonable excuse for the refusal or failure.

(3) The Commission must determine that the suspension under subsection (1) is terminated from a date determined by the Commission if, within 14 days after the date fixed for the examination, the person gives to the Commission evidence of a reasonable excuse for the refusal, failure or obstruction.

(4) If a determination under subsection (1) is made by a delegate of the Commission, the Commission must ensure that any determination terminating the suspension under subsection (3) also made by a delegate of the Commission is made by a delegate other than a delegate who was involved in making the determination under subsection (1).

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(5) If a person's right to compensation is suspended under subsection (1), compensation is not payable in respect of the period of the suspension.

Subdivision D—Obligations of claimants and Commission

330 Power to request the provision of information

(1) This section applies if the Commission is satisfied that a person who has made a claim:

(a) has information or a document (including information or a document relating to costs incurred by the person, such as a receipt) that is relevant to the claim; or

(b) may obtain any such information or a copy of such a document without unreasonable expense or inconvenience.

(2) The Commission may, by notice in writing given to the person, request the person to give:

(a) specified information or a specified document; or

(b) information or a document in a specified class of information or documents;

to the Commission within 28 days after the date of the notice or within such further period (if any) as the Commission, on the request of the person, allows.

(3) If the person refuses or fails, without reasonable excuse, to comply with a notice under subsection (2), the Commission may defer further investigation of the claim until the person gives the Commission the information, or a copy of the document, specified in the notice.

331 Certain documents to be supplied on request

(1) Any of the following persons may request the Commission to give him or her any document held by the Commission that relates to the claim:

(a) if the claim is made in respect of a member or former member—the Chief of the Defence Force;

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(b) if the claim is made in respect of a dependant of a deceased member—the Chief of the Defence Force;

(c) in any case—a person who has made a claim under section 319.

(2) The Commission must comply with the request.

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Part 2—Determination of claims

332 Simplified outline of this Part

The Commission must decide all claims under this Act in accordance with this Part. In deciding claims, the usual technicalities and rules that apply to courts do not apply to the Commission. The standards of proof that apply in determining issues under this Act are found in section 335.

There are 2 standards of proof that the Commission applies in deciding matters under this Part (and the rest of the Act), unless the presumption in subsection 27A(1) or (2) (that certain injuries and diseases are attributable to defence service) is relied on to make the decision.

The more beneficial standard of proof (in subsections 335(1) and (2)) only applies to some claims that relate to warlike or non-warlike service. The other standard of proof (in subsection 335(3)) applies to most other decisions under this Act.

This Part also introduces the Statements of Principles regime under sections 338 and 339. For some claims for acceptance of liability for an injury, disease or death the standard of proof can only be met if the injury or disease, or the cause of death, is covered by a Statement of Principles.

A Statement of Principles is an instrument made under the Chapter 9A. The Statement sets out all factors related to defence service that have been found to cause specific injuries, diseases and deaths.

The process for making Statements of Principles is found in Part 3 of Chapter 9A. A person who is entitled to a benefit under this Act can apply to the Authority to investigate a particular injury, disease

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or death or review one of its previous decisions about a Statement of Principles.

Under Chapter 9B, the Review Council can review decisions of the Authority about Statements of Principles. The Commission can also override an Authority decision about a Statement of Principles under section 340 of this Act.

333 Determination of claims

(1) After the Commission has investigated a claim under section 324, the Commission must:

(a) consider all matters that, in the Commission's opinion, are relevant to the claim; and

(b) determine the claim in writing in accordance with this Act.

Note: The Commission is required to give notice of determinations to claimants (see section 346).

(2) Subsection (1) does not require the Commission to consider matters relating to whether an injury or disease is attributable to defence service if the presumption in subsection 27A(1) or (2) is relied on for the purposes of determining that the injury or disease is a service injury or a service disease, as the case may be.

Note: Subsections 27A(1) and (2) contain a presumption that certain injuries and diseases are attributable to defence service unless the contrary is established.

334 Commission not bound by technicalities

(1) In considering, hearing or determining a claim or request mentioned in subsection (2) and in making a decision in relation to such a claim or request, the Commission:

(a) is not bound to act in a formal manner and is not bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks just; and

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(b) must act according to substantial justice and the substantial merits of the case, without regard to legal form and technicalities; and

(c) without limiting paragraphs (a) and (b), must take into account any difficulties that, for any reason, lie in the way of ascertaining the existence of any fact, matter, cause or circumstance, including any reason attributable to:

(i) the effects of the passage of time, including the effect of the passage of time on the availability of witnesses; and

(ii) the absence of, or a deficiency in, relevant official records, including an absence or deficiency resulting from the fact that an occurrence that happened during the defence service of a member was not reported to the appropriate authorities.

(2) Subsection (1) applies to:

(a) a claim under section 319; and

(b) a request under section 349 for reconsideration of a determination.

335 Standard of proof for Commission and Chief of the Defence Force

Standard of proof for claims relating to warlike service, non-warlike service, British nuclear test defence service or hazardous service

(1) If a claim in respect of subsection 23(1) or (3) or 24(1) for acceptance of liability for a person's injury, disease or death relates to warlike service, non-warlike service, British nuclear test defence service or hazardous service rendered by the person while a member, the Commission must determine that the injury is a service injury, that the disease is a service disease, or that the death is a service death, as the case may be, unless it is satisfied, beyond reasonable doubt, that there is no sufficient ground for making that determination.

Note 1: See subsection (4) about the application of this section.

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Note 2: This subsection, to the extent that it relates to subsections 23(1) and 24(1), is affected by section 338.

When there is no sufficient ground for making a determination

(2) In applying subsection (1) in respect of a person's injury, disease or death, related to service rendered by the person while a member, the Commission must be satisfied, beyond reasonable doubt, that there is no sufficient ground for determining:

(a) that the injury is a service injury; or

(b) that the disease is a service disease; or

(c) that the death is a service death;

as the case may be, if the Commission, after consideration of the whole of the material before it, is of the opinion that the material before it does not raise a reasonable hypothesis connecting the injury, disease or death with the circumstances of the particular service rendered by the person while a member.

Note: This subsection, to the extent that it relates to subsections 23(1) and 24(1), is affected by section 338.

Other determinations to be made to its reasonable satisfaction

(3) Except in making a determination to which subsection (1) applies, the Chief of the Defence Force or the Commission must, in making any determination or decision in respect of a matter arising under this Act, the regulations, or any other instrument made under this Act or the regulations, decide the matter to his, her or its reasonable satisfaction.

Note 1: See subsection (4) about the application of this section.

Note 2: This subsection, to the extent that it relates to subsections 23(1) and 24(1), is affected by section 339.

Section not apply to certain determinations

(4) This section does not apply in relation to the determination that a person's injury or disease is a service injury or a service disease, as the case may be, if the presumption in subsection 27A(1) or (2) is relied on for the purposes of making the determination.

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Note: Subsections 27A(1) and (2) contain a presumption that certain injuries and diseases are attributable to defence service unless the contrary is established.

336 Commission not entitled to make certain presumptions

Except as provided by subsections 27A(1) and (2), nothing in this Act entitles the Commission to presume that:

(a) an injury sustained by a person is a service injury; or

(b) a disease contracted by a person is a service disease; or

(c) the death of a person is a service death; or

(d) a person is entitled to be granted compensation.

337 No onus of proof

Nothing in section 335, or in any other provision of this Act, imposes on:

(a) a person claiming compensation or claiming for the acceptance of liability; or

(b) the Commission, the Commonwealth, the Department or any other person in relation to such a claim;

any onus of proving any matter that is, or might be, relevant to the determination of the claim.

338 Reasonableness of hypothesis to be assessed by reference to Statement of Principles

(1) This section applies to a claim under section 319 for acceptance of liability under subsection 23(1) or 24(1) for an injury, disease or death (other than an injury, disease or death covered by subparagraph 27(c)(i), paragraph 27(da) or (e), subparagraph 28(1)(c)(i) or paragraph 28(1)(ea) or (f)) that relates to warlike service, non-warlike service, British nuclear test defence service or hazardous service.

Note: Subsections 335(1) and (2) are relevant to these claims.

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(2) If the Authority has given notice under section 370CJ that it intends to carry out an investigation in respect of a particular kind of injury, disease or death:

(a) the Commission is not to determine a claim for acceptance of liability for a person's injury, disease or death of that kind; and

(b) the Commission, the Board or the Tribunal is not to make a decision on the reconsideration or review of:

(i) a determination by the Commission on such a claim; or

(ii) such a determination as previously affirmed or varied; or

(iii) a decision made on a previous review in substitution for a determination referred to in subparagraph (i) or (ii);

unless or until the Authority:

(c) has determined a Statement of Principles under section 370CB in respect of that kind of injury, disease or death; or

(d) has declared that it does not propose to determine such a Statement of Principles.

(2A) Subsection (2) does not apply if the presumption in subsection 27A(1) or (2) is relied on for the purposes of determining the claim or making a decision on the reconsideration or review of a determination relating to the claim.

Note: Subsections 27A(1) and (2) contain a presumption that certain injuries and diseases are attributable to defence service unless the contrary is established.

(3) For the purposes of subsection 335(2), a hypothesis connecting an injury sustained, or a disease contracted, by a person, or the death of a person, with the circumstances of any particular service rendered by the person while a member, is reasonable only if there is in force:

(a) a Statement of Principles determined under section 370CB or subsection 370CN(1); or

(b) a determination of the Commission under subsection 340(2) of this Act;

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that upholds the hypothesis.

Note: See subsection (4) about the application of this subsection.

(4) Subsection (3) does not apply in relation to a claim for acceptance of liability for a person's injury, disease or death if the Authority has neither determined a Statement of Principles under section 370CB, nor declared that it does not propose to make such a Statement of Principles, in respect of:

(a) the kind of injury sustained by the person; or

(b) the kind of disease contracted by the person; or

(c) the kind of death met by the person;

as the case may be.

339 Reasonable satisfaction to be assessed in certain cases by reference to Statement of Principles

(1) This section applies to a claim under section 319 for acceptance of liability under subsection 23(1) or 24(1) for an injury, disease or death (other than an injury, disease or death covered by subparagraph 27(c)(i), paragraph 27(da) or (e), subparagraph 28(1)(c)(i) or paragraph 28(1)(ea) or (f)) that relates to peacetime service.

Note: Subsection 335(3) is relevant to these claims.

(2) If the Authority has given notice under section 370CJ that it intends to carry out an investigation in respect of a particular kind of injury, disease or death:

(a) the Commission is not to determine a claim for acceptance of liability for a person's injury, disease or death of that kind; and

(b) the Commission, the Board or the Tribunal is not to make a decision on the review of:

(i) a determination by the Commission on such a claim; or

(ii) such a determination as previously affirmed or varied; or

(iii) a decision made on a previous review in substitution for a determination referred to in subparagraph (i) or (ii);

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unless or until the Authority:

(c) has determined a Statement of Principles under section 370CC in respect of that kind of injury, disease or death; or

(d) has declared that it does not propose to make such a Statement of Principles.

(2A) Subsection (2) does not apply if the presumption in subsection 27A(1) or (2) is relied on for the purposes of determining the claim or making a decision on the reconsideration or review of a determination relating to the claim.

Note: Subsections 27A(1) and (2) contain a presumption that certain injuries and diseases are attributable to defence service unless the contrary is established.

(3) In applying subsection 335(3) to determine a claim, the Commission is to be reasonably satisfied that an injury sustained, or a disease contracted, by a person, or the death of a person, is a service injury, a service disease, or a service death, only if:

(a) the material before the Commission raises a connection between the injury, disease or death of the person and some particular defence service rendered by the person while a member; and

(b) there is in force:

(i) a Statement of Principles determined under section 370CC or subsection 370CN(3); or

(ii) a determination of the Commission under subsection 340(3) of this Act; and

(c) the material, and the Statement of Principles or the determination (as the case may be), upholds the contention that the injury, disease or death of the person is, on the balance of probabilities, connected with that service.

(4) Subsection (3) does not apply in relation to a claim for acceptance of liability for a person's injury, disease or death if the Authority has neither determined a Statement of Principles under section 370CC, nor declared that it does not propose to make such a Statement of Principles, in respect of:

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(a) the kind of injury sustained by the person; or
(b) the kind of disease contracted by the person; or
(c) the kind of death met by the person;

as the case may be.

340 Determination by Commission overriding Authority's decision in relation to Statements of Principles

Commission may make determinations

(1) If:
(a) the Authority has determined, or has declared that it does not propose to make or amend, a Statement of Principles in respect of a particular kind of injury, disease or death (see Part 3 of Chapter 9A); and
(b) the Commission is of the opinion that, because the Statement of Principles is in force, or because of the decision by the Authority not to make or amend the Statement of Principles:
(i) claims for acceptance of liability for injuries or diseases of that kind made by members or former members of a particular class; or
(ii) claims for acceptance of liability for the deaths of such members or former members made by dependants of those members or former members;

cannot succeed; and
(c) the Commission is also of the opinion that, in all the circumstances of the case, those persons or their dependants should be entitled to receive compensation under this Act;

the Commission may, in its discretion, make a determination in respect of that kind of injury, disease or death under either or both subsections (2) and (3).

Requirements for a reasonable hypothesis determination

(2) A determination under this subsection in respect of a particular kind of injury, disease or death must:
(a) be in writing; and

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(b) state that it has effect only in relation to the specified class of members; and

(c) state that it applies only in respect of claims relating to:

(i) warlike service; or

(ii) non-warlike service; or

(iii) British nuclear test defence service; or

(iv) hazardous service; and

(d) set out:

(i) the factors that must as a minimum exist; and

(ii) which of those factors must be related to service rendered by a member;

before it can be said that a reasonable hypothesis has been raised connecting an injury, disease or death of that kind with the circumstances of that service.

Requirements for a reasonable satisfaction determination

(3) A determination under this subsection in respect of a particular kind of injury, disease or death must:

(a) be in writing; and

(b) state that it has effect only in relation to the specified class of members; and

(c) state that it applies only in respect of claims relating to peacetime service; and

(d) set out:

(i) the factors that must exist; and

(ii) which of those factors must be related to service rendered by a member;

before it can be said, on the balance of probabilities, that an injury, disease or death of that kind is connected with the circumstances of that service.

Determination is a legislative instrument

(4) A determination under subsection (2) or (3) is a legislative instrument.

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Effect of reasonable hypothesis determination

(5) While there is in force under subsection (2) a determination in respect of a particular kind of injury, disease or death, any Statement of Principles in force under section 370CB in respect of that kind of injury, disease or death does not apply in respect of any person in relation to whom the determination has effect.

Effect of reasonable satisfaction determination

(6) While there is in force under subsection (3) a determination in respect of a particular kind of injury, disease or death, any Statement of Principles in force under section 370CC in respect of that kind of injury, disease or death does not apply in respect of any person in relation to whom the determination has effect.

340A Subsection 27A(3) determination to be applied on review of a decision

(1) This section applies if:

(a) the Commission, the Board or the Tribunal is reconsidering or reviewing a determination (the ***original claim determination***) in relation to a claim under section 319; and

(b) at the time the original claim determination was made, a determination under subsection 27A(3) (the ***earlier presumption determination***) was in force in respect of:

(i) the kind of injury sustained by the person in respect of whom the claim was made; or

(ii) the kind of disease contracted by the person in respect of whom the claim was made; and

(c) at the time the decision on the reconsideration or review is made, a different determination under subsection 27A(3) (the ***current presumption determination***) is in force in respect of that kind of injury or disease; and

(d) the presumption in subsection 27A(1) or (2) is relied on for the purposes of making the decision on the reconsideration or review.

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(2) When making its decision on the reconsideration or review, the Commission, the Board or the Tribunal is to apply whichever of the earlier presumption determination or the current presumption determination will result in a more favourable outcome for the claimant.

(3) To avoid doubt, the earlier presumption determination may be applied even if it is no longer in force.

341 Statement of Principles to be applied on review of a decision

(1) This section applies if:

(a) the Commission, the Board or the Tribunal is reconsidering or reviewing a determination (the ***original claim determination***) in relation to a claim to which section 338 or 339 applies; and

(b) at the time the original claim determination was made, a Statement of Principles (the ***earlier Statement of Principles***) was in force in respect of:

(i) the kind of injury sustained by the person in respect of whom the claim was made; or

(ii) the kind of disease contracted by the person in respect of whom the claim was made; or

(iii) the kind of death suffered by the person in respect of whom the claim was made; and

(c) at the time the decision on the reconsideration or review is made, a different Statement of Principles (the ***current Statement of Principles***) is in force in respect of that kind of injury, disease or death.

(2) Subject to sections 340 and 340A, when making its decision on the reconsideration or review, the Commission, the Board or the Tribunal is to apply whichever of the earlier Statement of Principles or the current Statement of Principles will result in a more favourable outcome for the claimant.

(3) To avoid doubt, the earlier Statement of Principles may be applied even if it is no longer in force.

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342 Determination of the onset date for an incapacity for service or work

The Commission must determine in writing the date of onset of an incapacity for service or work of a member if the member is entitled to compensation under Part 3 of Chapter 4.

343 Determination of the date of death

The Commission must determine in writing the date of a deceased member's death if a dependant of the member is entitled to compensation under Chapter 5, 5AA or 6.

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Chapter 8—Reconsideration and review of determinations

Part 1—Preliminary

344 Simplified outline of this Chapter

Most determinations made by the Commission (the ***original determinations***) can be reconsidered and reviewed. This also applies to decisions of the Chief of the Defence Force about rehabilitation.

The Commission or the Chief of the Defence Force must give notice of an original determination to the claimant. The notice must set out the terms of and the reasons for the determination and the claimant's right to apply for review.

A claimant who has received notice of an original determination can ask the Veterans' Review Board to review it. If dissatisfied with the determination on review (the ***reviewable determination***), the claimant can apply to the Administrative Review Tribunal for review of the reviewable determination.

The Commission or the Chief of the Defence Force can also initiate reconsideration of original determinations made by the Commission or the Chief of the Defence Force.

345 Definitions

(1) In this Chapter:

acute support package instrument means an instrument made under:

(a) section 268B of this Act; or

(b) section 41B of the DRCA; or

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(c) section 115S of the VEA.

original determination means:

(a) a determination of the Commission under this Act (including a determination under subsection 347(3) or 347A(2) or (4)) that is not specified in subsection (2); or

(b) a determination of the Chief of the Defence Force under this Act (including a determination under subsection 347(3)) that relates to rehabilitation for a person if the Chief of the Defence Force is the rehabilitation authority of the person.

reviewable determination means:

(a) a determination under subsection 350(2) revoking, confirming or varying an original determination; or

(b) a determination that has been varied under subsection 348(1); or

(c) a determination under Part 4 by the Board on review of an original determination (except a determination that has been varied under subsection 348(1)); or

(d) a decision by the Principal Member under subsection 353C(4), (7) or (9) to dismiss an application for review.

(2) These determinations of the Commission are not ***original determinations***:

(aa) a determination under subsection 27A(3) (presumption that certain injuries and diseases are attributable to defence service);

(a) a determination under section 50, 52, 329 or 397 (suspending compensation);

(b) a determination under section 67 (guide to determining impairment and compensation);

(ba) a determination or revocation under section 89B or 126A (payments before a person receives a Commonwealth superannuation benefit);

(c) a determination under section 210 (Return to Work Scheme);

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(d) a determination under section 212 (Motor Vehicle Compensation Scheme);

(da) a determination under subsection 213(2) (conditions for the purposes of the definition of ***catastrophic injury or disease*** in subsection 213(1));

(db) a determination under section 257B (determination of classes for purposes of definitions of ***VEA eligible child*** and ***VEA eligible grandchild***);

(dc) a determination under subsection 257C(4) (determination that person is included in class determined under section 257B);

(e) a determination under section 258 (education scheme for certain eligible young persons and other children);

(f) a determination about the compensation to be provided under that education scheme;

(h) a determination under Part 3 of Chapter 6 (entitlement to provision of treatment);

(i) a determination under section 315 or 415 to recover an overpayment (but not as to the amount that should be recovered);

(j) a determination under section 316 to recover interest (but not as to the amount that should be recovered);

(l) a determination under section 428 to write off a debt (but not as to the amount that should be written off);

(m) a determination under section 429 to waive a debt (but not as to the amount that should be waived);

(n) a determination that has been varied under subsection 348(1);

(o) a determination under subsection 349(6) (extending the period within which a request for reconsideration must be made).

345A Application of this Chapter to decisions about clean energy payments

(1) This section modifies the way this Chapter applies in relation to a decision by the Commission that is only about a person's entitlement to a clean energy payment.

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(2) This Chapter applies to the person in the same way as it applies to a claimant. However, this does not affect the following provisions:
  (a) subsection 346(3);
  (b) section 348;
  (d) Part 4;
  (e) subsections 356(2) and (3);
  (f) subsection 357(6);
  (g) subsections 358(2) and (3).

345B Application of this Chapter to decisions about acute support packages

This Chapter applies in relation to a decision by the Commission under an acute support package instrument as if:
  (aa) a reference to an original determination were a reference to the decision; and
  (a) a reference to a claimant were a reference to the person to whom the decision relates; and
  (b) a reference to a claim were omitted.

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Part 2—Notifying original determinations

346 Notifying original determinations

(1) As soon as practicable after the Commission makes an original determination in relation to a claim, the Commission must give the claimant a written notice setting out:
  (a) the terms of the original determination; and
  (b) the reasons for the original determination.

(2) The Commission must also give a copy of the notice to the Chief of the Defence Force if the original determination relates to liability for a service injury, disease or death, or the permanent impairment, of a person who was a member of the Defence Force:
  (a) for a service injury or disease or permanent impairment—at the time when the original determination was made; or
  (b) for a service death—at the time of death.

(3) As soon as practicable after the Chief of the Defence Force makes an original determination in relation to a claim, the Chief of the Defence Force must give the claimant a written notice setting out:
  (a) the terms of the original determination; and
  (b) the reasons for the original determination.

(4) The Chief of the Defence Force must also give a copy of the notice to the Commission.

(5) A notice under subsection (1) or (3) must include a statement to the effect that the claimant may, if dissatisfied with the original determination, make an application to the Board under Part 4 for review of the determination.

(6) A failure to comply with this section does not affect the validity of the determination.

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Part 3—Reconsideration of determinations

347 Commission or Chief of the Defence Force initiating reconsideration of original determinations

(1) The Commission may, on its own initiative, reconsider an original determination made by the Commission.

(2) The Chief of the Defence Force may, on his or her own initiative, reconsider an original determination made by the Chief of the Defence Force.

(3) If the Commission or the Chief of the Defence Force reconsiders an original determination under subsection (1) or (2), the Commission or the Chief of the Defence Force may make a determination revoking, confirming or varying the original determination.

(4) The Commission or the Chief of the Defence Force must ensure that, if the original determination was made by a delegate and reconsideration of the determination is also to be made by a delegate, the reconsideration is done by a delegate who was not involved in making the original determination.

(5) The Commission or the Chief of the Defence Force must not reconsider an original determination under subsection (1) or (2) if the Tribunal has made a determination in proceedings under Part 5 for review of a reviewable determination made in relation to that original determination.

(6) The Commission or the Chief of the Defence Force must not reconsider an original determination under subsection (1) or (2) if the Board has made a determination in proceedings under Part 4 for review of that determination.

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347A Reconsideration of permanent impairment compensation

(1) If:

(a) an amount of compensation paid or payable under Part 2 of Chapter 4 has been worked out using Chapter 25 of the guide referred to in section 67, being the guide as in force before 1 July 2013; and

(b) a reviewable determination has been made, or the Tribunal has made a decision in a review under Part 5 of this Chapter, in relation to that compensation;

then the Commission may, on its own initiative, review the amount of that compensation using Chapter 25 of that guide, being that guide as in force when the review is conducted.

Note: The Commission's powers under this section are in addition to its powers under section 347 to reconsider original determinations it makes in relation to compensation under Part 2 of Chapter 4.

Increase in compensation

(2) If, after that review, the Commission is satisfied that the amount of that compensation is less than it should be, the Commission may make a determination increasing the amount of that compensation.

(3) A determination under subsection (2) takes effect on the day specified in the determination (which may be earlier than the day on which the determination is made).

No change in compensation

(4) If, after that review, the Commission is satisfied that the amount of that compensation should not be increased, the Commission may make a determination confirming the amount of that compensation.

(5) A determination under subsection (4) takes effect on the day on which the determination is made.

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348 Varying determinations made by the Board

(1) Subject to subsection (1A), the Commission or the Chief of the Defence Force may, with the consent of the claimant, vary:

(a) an original determination made by the Commission or the Chief of the Defence Force that has been affirmed by the Board under Part 4; or

(b) a determination made by the Board under Part 4 in substitution for an original determination made by the Commission or the Chief of the Defence Force;

if the claimant has made an application to the Tribunal under Part 5 for review of the affirmed determination or the determination made by the Board and the review has not been determined.

(1A) Section 31 (decision cannot be altered outside Tribunal process) of the *Administrative Review Tribunal Act 2024* applies to the affirmed determination or the determination made by the Board if:

(a) the application is referred to the guidance and appeals panel under section 122 of that Act; or

(b) a guidance and appeals panel application is taken to be made because the Administrative Review Tribunal's decision on the review is referred to the guidance and appeals panel under section 128 of that Act.

(2) The Commission or the Chief of the Defence Force may, for the purpose only of correcting a manifest error, vary the date approved by the Board as the date from which a determination of the Board made in substitution for a determination of the Commission or of the Chief of the Defence Force is to operate.

349 Chief of the Defence Force initiating reconsideration of determinations

(4) The Chief of the Defence Force may request the Commission to reconsider an original determination made by the Commission that relates to liability for a service injury, disease or death of a person who is or was a member of the Defence Force.

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(5) A request must:
  (a) be in writing; and
  (b) set out the reasons for the request; and
  (c) be given to the Commission within 30 days after the day on which notice of the determination was given to the person making the request.

(6) The Commission may, either before or after the end of that period, extend the period within which the request must be made.

Note: A determination under subsection (6) is not an original determination.

350 Reconsideration

(1) The Commission must, as soon as practicable after receiving a request to reconsider an original determination under section 349, reconsider the original determination.

(1A) If an application has been made under subsection 354(1) for review of the original determination, section 31 (decision cannot be altered outside Tribunal process) of the *Administrative Review Tribunal Act 2024* applies to the original determination if:
  (a) the application is referred to the guidance and appeals panel under section 122 of that Act; or
  (b) a guidance and appeals panel application is taken to be made because the Administrative Review Tribunal's decision on the review is referred to the guidance and appeals panel under section 128 of that Act.

(2) The Commission may, subject to subsection (1A), make a determination revoking, confirming or varying the original determination.

(3) The Commission must ensure that, if the original determination was made by a delegate and reconsideration of the determination is also to be made by a delegate, the reconsideration is done by a delegate who was not involved in making the original determination.

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351 Notifying reviewable determinations

(1) The Commission must, as soon as practicable after it makes a reviewable determination, give the claimant a written notice setting out:

(a) the terms of the reviewable determination; and

(b) the reasons for the reviewable determination.

(2) The notice must include a statement to the effect that, subject to the *Administrative Review Tribunal Act 2024*, an application may be made to the Tribunal under Part 5 for review of the reviewable determination.

(3) The Commission must also give a copy of the notice to the Chief of the Defence Force if the reviewable determination relates to liability for a service injury, disease or death, or the permanent impairment, of a person who was a member of the Defence Force:

(a) for a service injury or disease or permanent impairment—at the time when the reviewable determination was made; or

(b) for a service death—at the time of death.

(4) A failure to comply with this section does not affect the validity of the determination.

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Part 4—Review by the Board

Division 1—Preliminary

352 Definitions

In this Part:

applicant means a person who makes an application for review.

application for review means an application under section 352A.

relevant documentary medical evidence, in relation to an application for review of an original determination made in respect of a person, means certificates, reports or other documents from:

(a) a medical practitioner; or

(b) a hospital, or similar institution, in which the person received medical treatment;

about a medical condition of the person and reasonably used in support of the application.

review means a review by the Board under this Part.

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Division 2—Applications for review

352A Applications for review

The claimant may make an application to the Board for review of an original determination.

Note: Applications may also be made to the Board for review of:
(a) certain determinations under the DRCA (see section 62 of that Act); and
(b) certain decisions under the VEA (see section 134 of that Act).

352B Application requirements

(1) An application for review must:
(a) be in writing; and
(b) be given to the Board within 12 months after the day on which notice of the original determination was given to the person making the application.

(2) An application for review may set out the reasons for the application.

352C Notice of application

The Board must, as soon as practicable after receiving an application for review, give written notice of the application to:
(a) in any case—the Commission; and
(b) the Chief of the Defence Force, in either of the following cases:
(i) for an application relating to a service injury or disease—if the applicant was a member at the time the application was made;
(ii) for an application relating to a person's service death—if the person was a member at the time of death.

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352D Commission to prepare report

(1) Within 28 days after the Board notifies the Commission under section 352C of an application for review of an original determination, the Commission must:

(a) cause a report to be prepared that refers to the evidence on which the original determination was based; and

(b) subject to subsection (2), cause a copy of the report to be served on the applicant.

(2) If the report contains or refers to any information, opinion or other matter that, in the opinion of the Commission:

(a) is of a confidential nature; or

(b) might be prejudicial to the physical or mental health or well-being of the applicant to communicate to the applicant;

the document served on the applicant must not contain or refer to that information, opinion or other matter.

(3) If a copy of a report is served on an applicant in accordance with subsection (1), the applicant may, within 28 days after service of the report or within such further period as the applicant may request in writing before the expiration of that period, give to the Commission in writing any comments the applicant wishes to make concerning the report.

(4) The Commission must forward the following material to the Principal Member of the Board:

(a) all of the relevant documents, including any comments given to the Commission by the applicant concerning the report served on the applicant;

(b) if a further investigation has been made in consequence of the comments of the applicant—a supplementary report referring to any evidence obtained in that further investigation.

(5) The material must be forwarded:

(a) if the applicant gives comments in accordance with subsection (3) and no further investigation is made in

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consequence of those comments—as soon as practicable after receipt of those comments; or

(b) if a further investigation is made in consequence of comments given by the applicant—as soon as practicable after the completion of that further investigation; or

(c) in any other case—as soon as practicable after the expiration of the period or extended period referred to in subsection (3).

352E Ongoing requirement for lodging material documents with Board

If:

(a) an application for review is made to the Board; and

(b) before the Board determines the review:

(i) a party to the review obtains possession of a document; and

(ii) the document is relevant to the review; and

(iii) a copy of the document has not already been lodged with the Board;

the party must, subject to any directions given under subsection 359CL(2), lodge a copy of the document with the Board as soon as practicable after obtaining possession.

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Division 3—Proceedings before the Board

352F Principal Member or Senior Member to preside at hearing

(1) If the Principal Member is included in the Board members constituting the Board for the purpose of a review, the Principal Member is to preside at any hearing of the review.

(2) If the Principal Member is not included in the Board members constituting the Board for the purpose of a review, the Senior Member who is included in those Board members is to preside at any hearing of the review.

Note: Section 359CJ deals with the constitution of the Board for the purposes of a review.

352G Parties to review before Board

(1) The parties to a review are:
(a) the applicant for the review; and
(b) the Commission; and
(c) if the Chief of the Defence Force gives the Board a notice under subsection (1A)—the Chief of the Defence Force.

(1A) The Chief of the Defence Force may, as soon as practicable after receiving notice of an application to which paragraph 352C(b) applies, give written notice to the Board electing to be a party to the review.

(2) A party to a review may:
(a) appear in person, or be represented by a person other than a legal practitioner, at any hearing of the review; and
(b) make such submissions, in writing, to the Board as the party, or the party's representative, considers relevant to the review.

(3) A person is not entitled to ask for or receive any fee or other reward, or any payment for expenses, for representing a party to a review.

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(4) In this section, ***legal practitioner*** includes a person who:
  (a) holds a degree of Bachelor of Laws, Master of Laws or Doctor of Laws or Bachelor of Legal Studies; or
  (b) is otherwise qualified for admission as a barrister, solicitor, or barrister and solicitor, of the High Court or of the Supreme Court of a State or Territory.

352H Notice of hearing etc.

(1) As soon as practicable after receiving the relevant documents relating to a review of an original determination, the Principal Member must cause to be served on each party to the review a notice:
  (a) informing the party that the Board is to review the original determination; and
  (b) requesting the party to inform the Principal Member, in writing, within a reasonable time specified in the notice, whether:
    (i) the party wishes to appear on the hearing of the review; and
    (ii) if the party wishes to appear, whether the party intends to appear on the hearing in person, or be represented as mentioned in section 352G.

(2) If either party to a review informs the Principal Member that the party wishes to appear on the hearing of the review, the Principal Member must:
  (a) cause a date, time and place to be fixed for the hearing of the review; and
  (b) cause notice of the date, time and place so fixed to be served on each party to the review.

(3) The Principal Member may defer fixing a date, time and place for the hearing of a review until the parties to the review have informed the Principal Member that they are ready to proceed at a hearing.

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(4) If a party to a review does not inform the Principal Member, within the time specified in the notice served on the party under subsection (1), that the party wishes to appear on the hearing of the review, the review may be heard and determined in the absence of that party.

352J Procedure of Board

Directions hearings

(1) A Board member may hold a directions hearing in relation to a review.

Directions before hearing commences

(2) Before the hearing of a review has commenced, any of the following persons may give directions in relation to the procedure to be followed in connection with the review:
   (a) a Board member;
   (b) the National Registrar;
   (c) a Registrar;
   (d) a Deputy Registrar;
   (e) a Conference Registrar.

(3) Without limiting subsection (2), a direction under that subsection may:
   (a) require any person who is a party to the review to provide further information in relation to the review; or
   (b) require the Commission to provide a statement of the grounds on which the application for review will be resisted at the hearing of the review; or
   (c) require any person who is a party to the review to provide a statement of matters or contentions upon which reliance is intended to be placed at the hearing of the review.

Directions by Principal Member

(4) The Principal Member:

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(a) may give general directions as to the procedure of the Board with respect to reviews before it, including reviews the hearings of which have not been commenced; and

(b) may give directions as to the procedure of the Board with respect to a particular review before the Board, either before or after the hearing of the review has commenced.

(5) The power of the Principal Member under subsection (4) includes the power to give directions:

(a) as to the manner of communication of documents, including electronic documents, that are required or permitted to be communicated to the Board; and

(b) as to the time at which such documents are to be taken to have been so communicated.

(6) Without limiting the documents to which subsection (5) applies, those documents include:

(a) documents, comments and supplementary reports forwarded to the Principal Member under subsection 352D(4); and

(b) notices given to the Principal Member by a party to a review for the purposes of section 352H; and

(c) documents produced to the Board under section 352Q for the purposes of the hearing of a review; and

(d) further documents and reports of investigations or examinations forwarded to the Board as a consequence of a request made under subsection (8) of this section; and

(e) documents withdrawing or discontinuing applications for review communicated to the Board under subsection 353C(2).

Direction by presiding member

(7) The presiding member in respect of a review may, in respect of a matter not dealt with by directions under subsection (4), give directions as to the procedure to be followed on a hearing of the review, either before or after the hearing of the review has commenced.

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Requests by Principal Member

(8) The Principal Member may, in relation to a review, request the Commission:

(a) to obtain, and give to the Principal Member, further documents; or

(b) to arrange for the making of any investigation or medical examination and to give to the Principal Member a report of the investigation or examination.

(9) If a request is made under subsection (8), the Board may adjourn any hearing of the review to which the request relates.

Limits on powers

(10) A direction under subsection (2), (4) or (7) must not be inconsistent with:

(a) section 352H (notice of hearing etc.); or

(b) directions under subsection 359CL(2).

(11) In giving a direction or making a request under this section, the Principal Member or a presiding member must have regard to the Board's objective in section 359BA.

Note: A direction under subsection (2), (4) or (7) that is given in writing is not a legislative instrument (see section 353U).

352K Participation by telephone etc.

A Board member holding a directions hearing, or the Board in the hearing of a review, may allow a person to participate by:

(a) telephone; or

(b) closed-circuit television; or

(c) any other means of communication.

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352L Obligations of parties etc.

A party to a review, and any person representing such a party, must use their best endeavours to assist the Board to fulfil the Board's objective in section 359BA.

352M Questions to be decided by majority of Board

(1) A question before the Board on a review is to be decided according to the opinion of a majority of the Board members constituting the Board for the purposes of the review.

(2) If:

(a) the Board is constituted for the purposes of a review by 2 Board members only; and

(b) the 2 Board members cannot agree on a question arising in the review;

the Board must adjourn the review and refer the matter to the Principal Member for the giving of any necessary directions, or the taking of any other action, under section 359CM or 359CN.

352N Hearing to be in private except in special circumstances

(1) Subject to this section, the hearing of a review must be in private.

(2) The presiding member for a review may give directions (whether in writing or otherwise) as to the persons who may be present at any hearing of the review.

(3) If requested to do so by the applicant for a review, the presiding member for the review may permit a hearing, or a part of a hearing, of the review to take place in public.

Note: A direction under subsection (2) that is given in writing is not a legislative instrument (see section 353U).

352P Powers of Board

(1) The Board may:

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(a) take evidence on oath or affirmation for the purposes of a review; or

(b) adjourn a hearing of a review from time to time.

(2) The presiding member for a review may:

(a) require a person appearing at a hearing of the review for the purpose of giving evidence to take an oath or to make an affirmation; and

(b) administer an oath or affirmation to a person so appearing.

(3) The applicant for a review by the Board of an original determination is a competent and compellable witness in the hearing of the review of that determination by the Board.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence that the person will give will be true.

(5) The power of the Board under paragraph (1)(a) to take evidence on oath or affirmation for the purposes of a review:

(a) may be exercised on behalf of the Board by:

(i) the presiding member for the review; or

(ii) by another person (whether a Board member or not) authorised by the presiding member; and

(b) may be exercised within or outside Australia; and

(c) if the Board directs that the power is to be exercised subject to any limitations specified by the Board—is subject to any limitations so specified.

(6) If a person (the ***authorised person***) is authorised, in accordance with subparagraph (5)(a)(ii), to take evidence for the purposes of a review:

(a) the authorised person has, for the purposes of taking that evidence, all the powers of the Board under subsection (1) and all the powers of the presiding member under subsection (2); and

(b) for the purposes of the exercise of those powers by the authorised person, this Part has effect as if a reference to the

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Board, or to the presiding member, in relation to the review included a reference to the authorised person.

352Q Board may summon persons to give evidence or produce documents

(1) If the presiding member for a review has reasonable grounds to believe that a person has information, or a document or thing, relevant to the review, the presiding member may, in writing, summon the person to do either or both of the following on the day, and at the time and place, specified in the summons:

(a) appear at a hearing of the review to give evidence;

(b) produce any document or other thing specified in the summons.

(2) The day specified in the summons must be at least 14 days after the day the summons is given to the person.

352R Information may be made available to parties

(1) If, after relevant documents relating to a review have been forwarded to the Principal Member in accordance with subsection 352D(4) and before the commencement of the hearing of the review, a party to the review gives any information to the Board for the purposes of the review, the Board must make that information available to each other party to the review.

(2) However, if the Board is of the opinion that:

(a) any information under the control of the Board is of a confidential nature; or

(b) it might be prejudicial to the physical or mental health or well-being of the applicant to communicate any such information to the applicant;

the Board may refrain from making it available to the applicant, but may make it available to a person representing the applicant.

(3) Subsection (1) does not apply to information given by a party to a review who is not the Commission unless the Board is of the

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opinion that the information contains, or foreshadows the presentation of, evidence or a submission that has not been considered by the Commission in connection with the review.

352S Board not bound by technicalities etc.

(1) The Board, in conducting a review, in hearing a review or in making a decision on a review of an original determination:

(a) is not bound to act in a formal manner and is not bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks just; and

(b) must act according to substantial justice and the substantial merits of the case, without regard to legal form and technicalities; and

(c) without limiting paragraphs (a) and (b), must take into account any difficulties that, for any reason, lie in the way of ascertaining the existence of any fact, matter, cause or circumstance, including any reason attributable to:

(i) the effects of the passage of time, including the effect of the passage of time on the availability of witnesses; and

(ii) the absence of, or a deficiency in, relevant official records, including an absence or deficiency resulting from the fact that an occurrence that happened during the defence service of a member was not reported to the appropriate authorities.

(2) The Commission may make available to the Board:

(a) any Statements of Principles applied by the Commission; and

(b) such other material as the Commission considers may be of assistance to the Board in the exercise of its powers or the performance of its functions under this Act.

(3) Nothing in this section authorises the Commission to direct the Board with respect to its consideration of a particular review.

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352T Board may remit matters to Commission for further consideration

(1) At any stage of a review of an original determination, the Board may remit the original determination to the Commission for the Commission to reconsider the original determination.

Role of Commission

(2) If an original determination is remitted to the Commission, the Commission must reconsider the determination and must:
  (a) confirm the determination; or
  (b) vary the determination; or
  (c) revoke the determination and make a new determination in substitution for the determination revoked.

(3) If the Commission confirms the determination, the review resumes.

(4) If the Commission varies the determination:
  (a) the application for review is taken to be an application for review of the determination as varied; and
  (b) the person who made the application may:
    (i) proceed with the application for review of the determination as varied; or
    (ii) withdraw the application.

(5) If the Commission revokes the determination and makes a new determination in substitution for the determination revoked:
  (a) the application is taken to be an application for review of the new determination; and
  (b) the person who made the application may:
    (i) proceed with the application for review of the new determination; or
    (ii) withdraw the application.

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Division 4—Alternative dispute resolution processes

352U Referral of review for alternative dispute resolution process

(1) If an application is made to the Board for review of an original determination, the Principal Member may, in writing:
  (a) direct the holding of a conference of the parties to the review, or their representatives, in relation to the review, any part of the review or any matter arising out of the review; or
  (b) direct that the review, any part of the review or any matter arising out of the review, be referred for a particular alternative dispute resolution process (other than conferencing).

(2) The Principal Member may, in writing, direct the holding of conferences of the parties to a review or their representatives in the case of applications made to the Board for review of original determinations of a kind specified in the direction.

(3) The Principal Member may, in writing, direct that reviews be referred for a particular alternative dispute resolution process (other than conferencing) in the case of applications made to the Board for review of original determinations of a kind specified in the direction.

(4) A direction may be given under paragraph (1)(a) or (b):
  (a) whether or not a direction has previously been given under paragraph (1)(a) or (b) in relation to the review; and
  (b) whether or not a direction under subsection (2) or (3) has applied.

(5) If a direction under this section is applicable to:
  (a) a review; or
  (b) a part of a review; or
  (c) a matter arising out of a review;

each party must act in good faith in relation to the conduct of the alternative dispute resolution process concerned.

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Note: A direction under this section is not a legislative instrument (see section 353U).

352V Directions by Principal Member

(1) The Principal Member may give written directions about alternative dispute resolution processes.

(2) Directions under subsection (1) may relate to the following:
  (a) the procedure to be followed in the conduct of an alternative dispute resolution process;
  (b) the person who is to conduct an alternative dispute resolution process;
  (c) the procedure to be followed when an alternative dispute resolution process ends.

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

(4) A person is not entitled to conduct an alternative dispute resolution process unless the person is:
  (a) a Board member; or
  (b) the National Registrar, a Registrar, a Deputy Registrar or a Conference Registrar; or
  (c) a person engaged under section 353.

(5) The National Registrar, a Registrar or a Deputy Registrar, in conducting an alternative dispute resolution process, does so in the capacity of a Conference Registrar.

352W Agreement about the terms of a decision etc.

(1) If:
  (a) in the course of an alternative dispute resolution process under this Division, agreement is reached between the parties to a review or their representatives as to the terms of a decision of the Board:
    (i) in the review; or
    (ii) in relation to a part of the review; or

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(iii) in relation to a matter arising out of the review;

that would be acceptable to the parties; and

(b) the terms of the agreement are reduced to writing, signed by or on behalf of the parties and lodged with the Board; and

(c) 7 days pass after lodgement, and none of the parties has notified the Board in writing that the party wishes to withdraw from the agreement; and

(d) the Board is satisfied that a decision in the terms of the agreement or consistent with those terms would be within the powers of the Board;

the Board may, if it appears to it to be appropriate to do so, act in accordance with whichever of subsection (2) or (3) is relevant in the particular case.

(2) If the agreement reached is an agreement as to the terms of a decision of the Board in the review, the Board may, without holding a hearing of the review, make a decision in accordance with those terms.

(3) If the agreement relates to:

(a) a part of the review; or

(b) a matter arising out of the review;

the Board may, in its decision on the review, give effect to the terms of the agreement without dealing at the hearing of the review with the part of the review, or the matter arising out of the review, to which the agreement relates.

Variation or revocation of decision

(4) The Board may vary or revoke so much of a decision as it made in accordance with subsection (2) or (3) if:

(a) the parties, or their representatives, reach agreement on the variation or revocation; and

(b) the terms of the agreement are reduced to writing, signed by or on behalf of the parties and lodged with the Board; and

(c) the variation or revocation appears appropriate to the Board; and

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(d) in the case of a variation—the Board is satisfied that it would have been within the powers of the Board to have made the decision as varied.

352X Evidence not admissible

(1) Evidence of anything said, or any act done, at an alternative dispute resolution process under this Division is not admissible:
  (a) in any court; or
  (b) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory to hear evidence; or
  (c) in any proceedings before a person authorised by the consent of the parties to hear evidence.

Exceptions

(2) Subsection (1) does not apply so as to prevent, at the hearing of a review before the Board, the admission of particular evidence if the parties to the review agree to the evidence being admissible at the hearing.

(3) Subsection (1) does not apply so as to prevent, at the hearing of a review before the Board, the admission of:
  (a) a case appraisal report prepared by a person conducting an alternative dispute resolution process under this Division; or
  (b) a neutral evaluation report prepared by a person conducting an alternative dispute resolution process under this Division;

unless a party to the review notifies the Board before the hearing begins that the party objects to the report being admissible at the hearing.

352Y Eligibility of person conducting alternative dispute resolution process to sit as a member of the Board

If:
  (a) an alternative dispute resolution process under this Division in relation to a review is conducted by a Board member; and

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(b) a party to the review notifies the Board before the hearing that the party objects to that Board member participating in the hearing;

that Board member is not entitled to be a member of the Board as constituted for the purposes of the review.

352Z Participation by telephone etc.

The person conducting an alternative dispute resolution process under this Division may allow a person to participate by:

(a) telephone; or

(b) closed-circuit television; or

(c) any other means of communication.

353 Engagement of persons to conduct alternative dispute resolution processes

(1) The National Registrar may, on behalf of the Commonwealth, engage persons to conduct one or more kinds of alternative dispute resolution processes under this Division.

(2) The National Registrar must not engage a person under subsection (1) unless the National Registrar is satisfied, having regard to the person's qualifications and experience, that the person is a suitable person to conduct the relevant kind or kinds of alternative dispute resolution processes under this Division.

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Division 5—Decisions of the Board

353A Decision of Board

(1) On review of an original determination, the Board must have regard to:
  (a) the evidence that was before the Commission when the determination was made; and
  (b) any further evidence before the Board on the review that was not before the Commission, being further evidence relevant to the review.

(2) It is the duty of the Board, in reviewing an original determination, to satisfy itself with respect to, or to determine, as the case requires, all matters relevant to the review.

(3) For the purpose of reviewing an original determination, the Board may exercise all the powers and discretions that are conferred on the Commission by:
  (a) this Act; and
  (b) if the determination was made under another Act—that other Act;

in like manner as they are required to be exercised by the Commission.

(4) On review of an original determination, the Board must make a decision, in writing:
  (a) affirming the original determination; or
  (b) varying the original determination; or
  (c) setting aside the original determination and:
    (i) making a decision in substitution for the original determination; or
    (ii) making a decision in substitution for the original determination and, in relation to the substituted decision, remitting one or more matters to the

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Commission for consideration in accordance with any directions or recommendations of the Board; or

(iii) remitting one or more matters to the Commission for reconsideration in accordance with any directions or recommendations of the Board.

353B Board to give notice of decision and reasons to parties

Notice of decision

(1) The Board must give a copy of its decision under section 353A to:

(a) in any case—each party to the review; and

(b) unless the Chief of the Defence Force is a party to the review—the Chief of the Defence Force, in either of the following cases:

(i) for an application relating to a service injury or disease—if the applicant was a member at the time the decision was made;

(ii) for an application relating to a person's service death—if the person was a member at the time of death.

Reasons

(2) The Board must give reasons either orally or in writing for its decision under section 353A.

(3) If the Board does not give reasons in writing for its decision:

(a) a person notified under subsection (1) may, within 28 days after the day a copy of the decision is given to the person, make a request to the Board for a written statement of the Board's reasons for its decision; and

(b) the Board must comply with any request within 28 days after receiving the request.

(4) If the Board gives reasons in writing for its decision, those reasons must include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.

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(5) If the Board gives reasons in writing for its decision and the reasons contain or refer to any information, opinion or other matter that, in the Board's opinion:

(a) is of a confidential nature; or

(b) might be prejudicial to the physical or mental health or wellbeing of the applicant for the review to communicate to the applicant;

any written statement of the Board's reasons for the decision given to the applicant (or a person authorised by the applicant) must not contain or refer to that information, opinion or other matter.

Notice of review right

(6) The Board must give the applicant for the review (or a person authorised by the applicant) notice of the right under subsection 354(1) (about review by the Tribunal).

Filing of decision

(7) The Board must file its decision under section 353A, and any written statement of its reasons for the decision, with the records of the case.

353C Dismissal of applications

Dismissal if parties consent

(1) If each party to the review of an original determination consents, the Principal Member may dismiss the application for review without proceeding to review the original determination or, if the Board has started to review the original determination, without completing the review.

Dismissal if applicant discontinues or withdraws application

(2) A person who has made an application to the Board for a review of an original determination may, in writing, notify the Board that the application is withdrawn or discontinued.

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(3) If notification is so given, the Principal Member is taken to have dismissed the application without proceeding to review the original determination.

Dismissal if applicant fails to appear

(4) If the applicant for the review of an original determination fails to appear in person, or to appear by a representative, at:
   (a) a directions hearing for the review; or
   (b) an alternative dispute resolution process held under Division 4 in relation to the application; or
   (c) the hearing of the review;

the Principal Member may dismiss the application without proceeding to review the original determination.

(5) For the purposes of subsection (4):
   (a) a person is taken to appear in person or by a representative at an alternative dispute resolution process if the person or representative participates in it by a means allowed under section 352Z; and
   (b) a person is taken to appear in person or by a representative at a directions hearing, or the hearing of the review, if the person or representative participates in it by a means allowed under section 352K.

(6) The Principal Member must, before exercising a power under subsection (4), be satisfied that appropriate notice was given to the applicant for the review of the time and place of the directions hearing, the alternative dispute resolution process or the hearing of the review.

Dismissal if original determination not reviewable

(7) If:

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(a) the applicant for the review of an original determination is notified in writing by the National Registrar that the original determination does not appear to be reviewable by the Board; and

(b) before the end of the period prescribed in an instrument under subsection (8), the person is unable to show that the original determination is so reviewable;

the Principal Member may dismiss the application without proceeding to review the original determination.

(8) The Minister must, by legislative instrument, prescribe a period for the purposes of paragraph (7)(b).

Dismissal if applicant fails to proceed or fails to comply with Board's direction

(9) If the applicant for the review of an original determination fails within a reasonable time:

(a) to proceed with the application; or

(b) to comply with a direction given to the applicant under this Part or Chapter 8A in relation to the application;

the Principal Member may dismiss the application without proceeding to review the original determination.

Notice requirements

(10) If the Principal Member dismisses an application under subsection (4), (7) or (9), the Principal Member must:

(a) in any case—give notice of the dismissal to each party to the review; and

(aa) unless the Chief of the Defence Force is a party to the review—give notice of the dismissal to the Chief of the Defence Force, in either of the following cases;

(i) for an application relating to a service injury or disease—if the applicant was a member at the time of the dismissal;

(ii) for an application relating to a person's service death—if the person was a member at the time of death; and

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(b) include in the notice a statement to the effect that, if the person is dissatisfied with the decision:

(i) application may, subject to the *Administrative Review Tribunal Act 2024*, be made to the Tribunal under Part 5 of this Chapter for review of the decision; and

(ii) the person may, under section 268 of the *Administrative Review Tribunal Act 2024*, request a statement of reasons for the decision.

(11) A failure to comply with paragraph (10)(b) does not affect the validity of the decision.

353D Consequence of dismissal of application

If an application is dismissed under section 353C, the review to which the application relates is taken to be concluded unless the application is reinstated under section 353E.

353E Circumstances in which application may be reinstated

(1) If the Principal Member dismisses an application under subsection 353C(4):

(a) the applicant may, within 28 days after receiving notification of the dismissal, apply to the Principal Member for reinstatement of the application; and

(b) if the Principal Member considers it appropriate to do so, the Principal Member may reinstate the application and give such directions as appear to the Principal Member to be appropriate in the circumstances.

(2) If it appears to the Principal Member that an application has been dismissed under section 353C in error, the Principal Member may, on the application of a party to the review or on the Principal Member's own initiative, reinstate the application and give such directions as appear to the Principal Member to be appropriate in the circumstances.

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353F Date of operation of decision by Board

(1) The Board must specify in its decision on a review of an original determination the date from which its decision is to operate.

(2) Subsection (1) does not apply if the Board affirms the original determination under review.

353G Correction of errors in decisions or statements of reasons

(1) If, after making a decision, the Board is satisfied that there is an obvious error in the text of the decision or in a written statement of reasons for the decision, the Board may direct the National Registrar, a Registrar or a Deputy Registrar to alter the text of the decision or statement in accordance with the directions of the Board.

(2) If the text of a decision or statement is so altered, the altered text is taken to be the decision of the Board or the statement of reasons for the decision, as the case may be.

(3) Examples of obvious errors in the text of a decision or statement of reasons are where:

(a) there is an obvious clerical or typographical error in the text of the decision or statement of reasons; or

(b) there is an inconsistency between the decision and the statement of reasons.

(4) The powers of the Board under this section may be exercised by the Principal Member or by the Board member who presided in respect of the review to which the decision relates.

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Division 6—Offences

353H Offence—failure of witness to attend

(1) A person commits an offence if:

(a) the person has been served with a summons under section 352Q to appear at a hearing; and

(b) the person:

(i) fails to appear as required by the summons; or

(ii) fails to appear and report from day to day; and

(c) has not been excused or released by the Board from further attendance.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

(2) An offence under this section is an offence of strict liability.

(3) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

353J Offence—failure to take an oath, make an affirmation or answer a question etc.

(1) A person commits an offence if:

(a) the person is required under section 352P to take an oath or make an affirmation; and

(b) the person fails to comply with the requirement.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

(2) A person commits an offence if:

(a) the person appears as a witness before the Board; and

(b) the Board member presiding at the proceeding has required the person to answer a question; and

(c) the person fails to answer the question.

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Penalty: Imprisonment for 6 months or 30 penalty units, or both.

(3) A person commits an offence if:
(a) the person has been served with a summons under section 352Q; and
(b) the summons required the person to produce a document; and
(c) the person fails to comply with the requirement.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

(4) An offence against subsection (1), (2) or (3) is an offence of strict liability.

(5) Subsections (1), (2) and (3) do not apply if the person has a reasonable excuse.

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

353K Offence—giving false or misleading evidence

A person commits an offence if:
(a) the person gives evidence before the Board; and
(b) the person does so knowing that the evidence is false or misleading in a material particular.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

353L Offence—contempt of Board

Insulting a person

(1) A person commits an offence if:
(a) the person engages in conduct; and
(b) the person's conduct insults another person in, or in relation to, the exercise of the other person's powers or functions under this Part or Chapter 8A.

Penalty: Imprisonment for 6 months.

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Interrupting proceedings of the Board

(2) A person commits an offence if:
  (a) the person engages in conduct; and
  (b) the person's conduct interrupts the proceedings of the Board.

Penalty: Imprisonment for 6 months.

Creating a disturbance

(3) A person commits an offence if:
  (a) the person engages in conduct; and
  (b) the person's conduct creates a disturbance in or near a place where the Board is sitting.

Penalty: Imprisonment for 6 months.

Taking part in creating or continuing a disturbance

(4) A person commits an offence if:
  (a) the person takes part in creating or continuing a disturbance; and
  (b) the disturbance is in or near a place where the Board is sitting.

Penalty: Imprisonment for 6 months.

Contempt of Board

(5) A person commits an offence if:
  (a) the person engages in conduct; and
  (b) the person's conduct would, if the Board were a court of record, constitute a contempt of that court.

Penalty: Imprisonment for 6 months.

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Division 7—Other matters

353M Immunity

Board members

(1) A Board member has, in performing duties as a Board member, the same protection and immunity as a Justice of the High Court.

Registrars

(2) The National Registrar, a Registrar, a Deputy Registrar or a Conference Registrar has, in performing duties as such a person, the same protection and immunity as a Justice of the High Court.

Alternative dispute resolution practitioners

(3) An alternative dispute resolution practitioner has, in performing duties as an alternative dispute resolution practitioner under this Part, the same protection and immunity as a Justice of the High Court.

Party representatives

(4) A person representing a party at a hearing of a review before the Board has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

Witnesses

(5) Subject to this Part, a person summoned to attend, or appearing, before the Board as a witness has the same protection, and is, in addition to the penalties provided by this Part, subject to the same liabilities, as a witness in proceedings in the High Court.

Definition

(6) In this section:

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alternative dispute resolution practitioner means a person who conducts an alternative dispute resolution process under Division 4.

353N Medical expenses

(1) The Commonwealth may, subject to this section, pay to an applicant for a review an amount to cover the medical expenses incurred by the applicant in respect of relevant documentary medical evidence submitted to the Board for the purposes of the review.

(2) Subsection (1) does not apply to any relevant documentary medical evidence obtained before the day on which a copy or notice of the original determination that is subject to review was served on the applicant.

(3) The applicant is not to be paid:
  (a) if the applicant has submitted to the Board for the purposes of the review relevant documentary medical evidence relating to only one medical condition—more than the prescribed amount for medical expenses; or
  (b) if the applicant has submitted to the Board for the purposes of the review relevant documentary medical evidence relating to more than one medical condition—more than the prescribed amount for the medical expenses incurred in respect of the evidence relating to any one of those conditions.

(4) An amount is not payable in respect of medical expenses unless:
  (a) the person who has incurred the expenses; or
  (b) any person approved by that person or by the Commission;

applies in writing to the Commission for payment under subsection (5).

(5) The application for payment must:
  (a) be in accordance with a form approved by the Commission; and

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(b) be made within 3 months after the relevant documentary medical evidence was submitted to the Board; and

(c) be lodged at a place approved by the Commission under subsection 323(2).

(6) An application for payment lodged at a place approved by the Commission under subsection 323(2) is taken to have been made on a day determined under that subsection.

353P Travelling expenses for obtaining medical evidence

(1) If an applicant has had to travel to obtain any relevant documentary medical evidence submitted to the Board, the applicant is, subject to this section, entitled to be paid in relation to that travel the travelling expenses that are prescribed.

(2) If:

(a) the applicant is accompanied by an attendant when travelling to obtain the evidence; and

(b) the Commission is of the view that it is reasonable for the applicant to be so accompanied by an attendant;

the attendant is, subject to this section, entitled to be paid in relation to that travel the travelling expenses that are prescribed.

(3) Travelling expenses are not payable in respect of travel outside Australia.

(4) Travelling expenses are not payable unless:

(a) the person who has incurred the expenses; or

(b) any person approved by that person or by the Commission;

applies in writing to the Commission for payment under subsection (5).

(5) The application for payment must:

(a) be in accordance with a form approved by the Commission; and

(b) be made within:

(i) 12 months after the completion of the travel; or

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(ii) if the Commission thinks that there are exceptional circumstances that justify extending that period—such further period as the Commission allows; and

(c) be lodged at a place approved by the Commission under subsection 323(2).

(6) An application for payment lodged at a place approved by the Commission under subsection 323(2) is taken to have been made on a day determined under that subsection.

(7) The Commonwealth is to pay the travelling expenses to which a person is entitled under this section.

353Q Other travelling expenses

Applicant attending hearing

(1) Subject to such conditions as are prescribed, an applicant for a review is entitled, if the applicant travels in Australia for the purpose of attending a hearing of the review, to receive such travelling expenses in connection with that travel as are prescribed.

Attendant accompanying applicant

(2) Subject to such conditions as are prescribed, an attendant who travels in Australia for the purpose of accompanying an applicant to a hearing of a review is entitled to be paid such travelling expenses in connection with that travel as are prescribed.

Persons who make claim on behalf of claimant

(3) If:

(a) a claim is made under section 319 by a person who, under subsection 320(2), is entitled to make the claim; and

(b) the person travels within Australia, with the approval of the Commission, for the purpose of attending a hearing of a review of an original determination in respect of the claim;

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the person is, subject to such conditions as are prescribed, entitled to be paid such travelling expenses in connection with that travel as are prescribed.

Expenses are payable by the Commonwealth

(4) Travelling expenses to which a person is entitled to under this section are payable by the Commonwealth.

Meaning of Australia

(5) In this section:

Australia, when used in a geographical sense, includes the external Territories.

353R Applications for other travelling expenses

(1) If a person who has travelled in Australia is entitled to be paid travelling expenses under section 353Q in connection with that travel, application for payment of travelling expenses in respect of that travel may be made:
  (a) by that person; or
  (b) with the approval of that person; or
  (c) if that person is, by reason of physical or mental ailment or of that person's death, unable to approve another person to make the application on the person's behalf—with the approval of the Commission, by another person on behalf of that person.

(2) An application under subsection (1) must be:
  (a) in writing; and
  (b) in accordance with a form approved by the Commission; and
  (c) accompanied by such evidence available to the applicant as the applicant considers may be relevant to the application; and
  (d) made within:

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(i) 12 months after the completion of the travel to which the application relates; or

(ii) if the Commission thinks that there are exceptional circumstances that justify extending that period—such further period as the Commission allows.

(3) An application under subsection (1):

(a) must be lodged at a place approved by the Commission under subsection 323(2); and

(b) is taken to have been made on a day determined under subsection 323(2).

353S Advance of travelling expenses for obtaining medical evidence

(1) If the Commission is satisfied that:

(a) it is reasonable to expect that a person may become entitled to travelling expenses under section 353P or 353Q; and

(b) it is appropriate, in all the circumstances, that the person should be paid an advance on account of those expenses;

the Commission may authorise the payment of that advance to the person.

(2) If:

(a) a person has received an advance on account of any travelling expenses that the person is likely to incur; and

(b) the person:

(i) does not incur those travelling expenses; or

(ii) incurs travelling expenses that are less than the amount of the advance;

the person is liable to repay to the Commonwealth:

(c) the amount of the advance; or

(d) the difference between the amount of the advance and the amount of the travelling expenses;

as the case requires.

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353T Fees for witnesses

(1) A person, other than the applicant, summoned to appear as a witness at a hearing before the Board is entitled to be paid, in respect of the person's attendance, fees, and allowances for expenses, fixed by or in accordance with the regulations in respect of the attendance.

(2) Subject to subsection (3), the fees and allowances are to be paid:
  (a) in a case where the witness was summoned at the request of the applicant—by the applicant; or
  (b) in any other case—by the Commonwealth.

(3) The Board may, in its discretion, order that the fees and allowances of a witness referred to in paragraph (2)(a) are to be paid, in whole or in part, by the Commonwealth.

353U Instruments that are not legislative instruments

The following are not legislative instruments:
  (a) a direction under subsection 352J(2), (4) or (7) that is given in writing (procedure of Board);
  (b) a direction under subsection 352N(2) that is given in writing (hearing to be in private except in special circumstances);
  (c) a direction under section 352U (referral of review for alternative dispute resolution process);
  (d) a direction under section 352V (directions by Principal Member).

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Part 5—Review by the Tribunal

354 Applications to the Tribunal for review

(1) An application may be made to the Tribunal for review of a reviewable determination.

Note: Item 2 of the table in section 355 sets out who may make the application.

(1AA) The *Administrative Review Tribunal Act 2024* applies to an application for review of a reviewable determination by the Board under Part 4 of this Act as if references in the following provisions of that Act to the decision-maker for the decision the subject of the application were instead references to the Commission:

(a) section 56;
(b) section 60;
(c) paragraph 61(1)(b);
(ca) paragraph 61(1A)(b);
(d) paragraph 65(2)(b);
(e) subsection 73(3);
(f) subsection 79(3);
(g) paragraph 126(2)(b);
(h) paragraph 129(2)(b).

Note: The provisions of the *Administrative Review Tribunal Act 2024* mentioned in this subsection apply normally in respect of other kinds of reviewable determinations.

(1A) The *Administrative Review Tribunal Act 2024* applies to an application for review of a reviewable determination by the Board under Part 4 of this Act as if references in the following provisions of that Act to the decision-maker for the decision the subject of the application were instead references to whichever of the Commission or the Chief of the Defence Force made the original determination:

(a) paragraph 21(2)(b);

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(b) Subdivision B of Division 4 of Part 3;
(c) paragraph 31(2)(b);
(d) section 54;
(e) section 85 (subject to subsection (1B) of this section);
(f) paragraph 105(c);
(g) subsection 108(2).

Note: The provisions of the *Administrative Review Tribunal Act 2024* mentioned in this subsection apply normally in respect of other kinds of reviewable determinations.

(1B) If:

(a) a person applies to the Tribunal for review of a decision (the ***reviewable decision***) that is a reviewable determination made by the Board; and
(b) that reviewable determination is a determination affirming an original determination made by the Commission; and
(c) in the course of the review by the Tribunal, the person provides to the Tribunal a document relevant to the review; and
(d) the Tribunal is satisfied that, at the time when the Board made the reviewable determination, the Board did not have the document and the person could have provided the document to the Board without unreasonable expense or inconvenience; and
(e) the Tribunal is satisfied that, if the Board had the document at the time when the Board made the reviewable determination, the Board would have made a determination more favourable to the claimant than the reviewable determination;

then section 85 of the *Administrative Review Tribunal Act 2024* applies in relation to the review by the Tribunal of the reviewable decision as if references in that section to the decision-maker were instead references to the Commission.

(1C) If, under subsection 85(1) of the *Administrative Review Tribunal Act 2024* (as modified by subsection (1B) of this section), the

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Tribunal remits the reviewable decision to the Commission for reconsideration of that decision by the Commission:

(a) subsections 85(2), (7), (8), (9) and (10) of that Act do not apply in relation to that remittal; and

(b) the Commission must reconsider that decision, and do one of the following things, within the period of 28 days beginning on the day on which that decision was remitted to the Commission:

(i) affirm that decision;

(ii) vary that decision;

(iii) set aside that decision and make a new decision in substitution for the decision set aside; and

(c) if the Commission has not reconsidered that decision, and done one of those things, within that 28-day period, the Commission is taken to have affirmed that decision; and

(d) after the Commission complies with paragraph (b) of this subsection, or is taken to have affirmed that decision under paragraph (c) of this subsection, the proceeding for review of that decision in the Tribunal resumes; and

(e) subsections 85(3), (4), (5) and (6) of that Act apply in relation to that remittal.

Note: Section 85 of the *Administrative Review Tribunal Act 2024* applies normally in respect of other kinds of reviewable determinations.

(2) An application may be made to the Tribunal for review of:

(a) a determination under subsection 50(1), 52(1), 257C(4), 329(1) or 397; or

(b) a failure to make a determination under subsection 50(3), 52(3), 257C(4), 329(3) or 397.

355 Modifications of the *Administrative Review Tribunal Act 2024*

For the purposes of a review by the Tribunal under this Part, the *Administrative Review Tribunal Act 2024* has effect subject to the modifications set out in this table.

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Section 355

Modifications of the *Administrative Review Tribunal Act 2024*		
Item	**Provision**	**Modification**
1	Section 57	Sittings of the Tribunal for the purposes of a review under this Part may be held at any place, whether within or outside Australia
2	Section 17 and subsection 123(2)	An application may be made only by: (a) the claimant; or (b) the Chief of the Defence Force; or (c) the Commission.
3	Subsection 18(1)	The period within which an application may be made to the Tribunal is: (a) for a review of a determination by the Board, or a determination that has been varied under subsection 348(1)—3 months after the day on which the notice of the Board's determination or variation was given to the applicant; or (b) otherwise—60 days after the day on which notice of the determination was given to the applicant
4	Subsections 19(1) and (2)	For a review of a determination by the Board on review of an original determination, or a determination that has been varied under subsection 348(1), the Tribunal cannot extend the time for making an application beyond the period of 12 months after the day on which notice of the Board's determination or variation was given to the applicant
5	Subsection 22(1)	The Commission rather than the Board is a party to a proceeding before the Tribunal for review of a determination by the Board. If the Chief of the Defence Force or the Commission made the application for review, the claimant is also a party to the review.

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355A Applications cannot be made to the Tribunal guidance and appeals panel

Despite section 123 of the *Administrative Review Tribunal Act 2024*, an application cannot be made under that section to refer a decision of the Tribunal in relation to an application for review of a reviewable determination by the Board under Part 4 of this Act.

356 Evidence

(1) Evidence of a matter is not, without the leave of the Tribunal, admissible in proceedings under this Part if:

(a) the person who instituted the proceedings seeks to adduce the evidence before the Tribunal; and

(b) the person had not disclosed that matter to the Tribunal at least 28 days before the day fixed for the hearing of those proceedings.

(2) Information or a document is not, without the leave of the Tribunal, admissible in evidence in proceedings under this Part if:

(a) the Commission has determined a claim and, before doing so, gave the claimant a notice under section 330 requesting the claimant to give the Commission the information or document specified in the notice; and

(b) the claimant failed to comply with the notice; and

(c) the claimant had the information or document, or could have obtained it without unreasonable expense or inconvenience, before the determination was made.

(3) The Tribunal must not give leave under subsection (2) unless:

(a) the claimant provides a statement of reasons why he or she failed to comply with the notice; and

(b) the Tribunal is satisfied that there are special circumstances justifying the admission of the information or document in evidence.

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357 Costs of proceedings before the Tribunal

(1) Subject to this section and to subsection 358(1), the costs incurred by a party to proceedings instituted under this Part in respect of a determination are to be borne by that party.

(2) If, in proceedings instituted by a claimant, the Tribunal makes a determination:

(a) varying a determination in a manner favourable to the claimant; or

(b) setting aside a determination and making a determination in substitution for the first-mentioned determination that is more favourable to the claimant than the first-mentioned determination;

the Tribunal may order that the costs of those proceedings incurred by the claimant, or a part of those costs, are to be paid by the Commonwealth.

(3) The Tribunal may order that the costs incurred by the claimant of proceedings instituted by the Commission or the Chief of the Defence Force be paid by the Commonwealth.

(4) If the Tribunal makes a determination setting aside a determination and remitting the case for re-determination by the Commission or the Chief of the Defence Force, the Tribunal must order that the costs of the proceedings before it incurred by the claimant are to be paid by the Commonwealth.

(5) This section does not authorise the Tribunal to order the Commonwealth to pay any costs incurred by a claimant in relation to an application for an extension of time for applying to the Tribunal for a review of a determination.

(6) If, in any proceedings, the Tribunal varies or sets aside a determination, the Tribunal must not make an order under subsection (2) or (4) in favour of a claimant in relation to the costs of those proceedings if:

(a) the Commission, before making the determination, gave the claimant a notice under section 330 requesting the claimant

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to give the Commission information or a document specified in the notice; and

(b) the Tribunal is satisfied that:

(i) the claimant failed to comply with that notice; and

(ii) at the time when the Commission made the reviewable determination, it did not have the information or document, nor was the information or document reasonably available to it; and

(iii) if the Commission had the information or document at the time when it made the determination, it would have made a determination more favourable to the claimant than the reviewable determination.

(6A) If, in any proceedings, the Tribunal varies or sets aside a reviewable determination made by the Board, the Tribunal must not make an order under subsection (2) or (4) in favour of a claimant in relation to the costs of those proceedings if:

(a) in the course of the review by the Tribunal, the claimant provided to the Tribunal a document relevant to the review; and

(b) the Tribunal is satisfied that, at the time when the Board made the reviewable determination, the Board did not have the document and the claimant could have provided the document to the Board without unreasonable expense or inconvenience; and

(c) the Tribunal is satisfied that, if the Board had the document at the time when the Board made the reviewable determination, the Board would have made a determination more favourable to the claimant than the reviewable determination.

(6B) If, in any proceedings, the Tribunal varies or sets aside a reviewable determination made by the Board, the Tribunal must not make an order under subsection (2) or (4) in favour of a claimant in relation to the costs of those proceedings if the Tribunal is satisfied that:

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(a) in connection with the review by the Tribunal or Board, the claimant was granted legal aid under a Commonwealth, State or Territory legal aid scheme or service; or

(b) the claimant failed, without reasonable excuse, to appear at the hearing of the review by the Board; or

(c) in connection with the review by the Board, the claimant failed to comply with a direction under subsection 352J(2); or

(d) the claimant failed to comply with a notice under section 330 before the Commission made the original determination in relation to which the reviewable determination was made.

(6C) If, in any proceedings, the Tribunal remits a reviewable determination made by the Board to the Commission as mentioned in subsection 354(1C), the Tribunal must not make an order under subsection (2) or (4) in favour of a claimant in relation to the costs of those proceedings.

(7) If the Tribunal orders the Commonwealth to pay costs incurred by a claimant, the Tribunal may, in the absence of agreement between the parties as to the amount of the costs, tax or settle the amount of the costs or order that the costs be taxed by the Principal Registrar (within the meaning of the *Administrative Review Tribunal Act 2024*) or an authorised person (within the meaning of that Act) of the Tribunal.

(8) For the purposes of section 115 of the *Administrative Review Tribunal Act 2024*, the Commonwealth is taken to be a party to a proceeding before the Tribunal.

358 Costs where proceedings rendered abortive

(1) Subject to this section, if a proceeding instituted under this Part in respect of a reviewable determination is rendered abortive because a determination has been made, following a reconsideration under subsection 347(1) or (2), varying or revoking the reviewable determination, the Commonwealth is liable to reimburse the

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claimant for costs reasonably incurred by the claimant in connection with that proceeding.

(2) The Commission may determine, in writing, that subsection (1) does not apply to costs if:

(a) a determination (the ***first determination***) of a claim has been made; and

(b) the Commission, before the first determination was made, gave the claimant a notice under section 330 requesting the claimant to give it information or a document specified in the notice; and

(c) the claimant failed to comply with the notice; and

(d) when the first determination was made, the Commission did not have the information or document nor was the information or document reasonably available to it; and

(e) after the first determination was made, the claimant disclosed the information or document to the Commission or to the Tribunal; and

(f) the Commission reconsidered the first determination under subsection 347(1) and made a determination more favourable to the claimant than the first determination; and

(g) the Commission is satisfied that, if it had the information or document when the first determination was made, a determination more favourable to the claimant than the first determination would have been made; and

(h) the Commonwealth would, apart from this subsection, be liable under subsection (1) to reimburse the claimant for costs reasonably incurred by the claimant.

(3) The Commission must give a copy of a determination made by it under subsection (2) to the claimant.

(4) Application may be made to the Tribunal for review of a determination of the Commission to make a determination under subsection (2).

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359 Certain provisions not to apply to review of determinations of the Board

Section 356 does not apply to a review by the Tribunal of a determination of the Board.

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Chapter 8A—Veterans' Review Board

Part 1—Simplified outline of this Chapter

359A Simplified outline of this Chapter

The Veterans' Review Board is continued in existence under Part 2 of this Chapter. Part 2 also sets out the Board's objective.

Part 3 deals with the administration of the Board, and includes provisions relating to Board members, acting Board members and procedures of the Board.

Part 4 deals with staff, delegations of the Principal Member and the requirement for Board members to take an oath or make an affirmation.

Part 7 of the *Acts Interpretation Act 1901* also has provisions that are relevant to Board members and acting Board members.

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Part 2—Establishment of Board

359B Establishment

(1) The Veterans' Review Board that was, immediately before the commencement of this section, in existence by virtue of the VEA, is continued in existence under the same name.

(2) The Board consists of:
  (a) a Principal Member; and
  (b) such number of Senior Members as are appointed in accordance with this Act; and
  (c) such number of other members as are appointed in accordance with this Act.

359BA Board's objective

In carrying out its functions, the Board must pursue the objective of providing a mechanism of review that:
  (a) is accessible; and
  (b) is fair, just, economical, informal and quick; and
  (c) is proportionate to the importance and complexity of the matter; and
  (d) promotes public trust and confidence in the decision-making of the Board.

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Part 3—Administration

Division 1—Membership

359C Appointment of members

Appointment by Governor-General

(1) The members of the Board are to be appointed by the Governor-General by written instrument.

Note: A Board member may be reappointed (see section 33AA of the *Acts Interpretation Act 1901*).

(2) The Board must, at all times, have among its members persons selected from lists submitted to the Minister in accordance with subsection (3).

(3) The Minister may, from time to time, request organisations representing veterans throughout Australia to submit to the Minister lists of names of persons from which the organisation concerned recommends that a selection be made of persons to serve as Services members of the Board.

Period of appointment

(4) A Board member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Basis of appointment

(5) The Principal Member is to be appointed on a full-time basis.

(6) A Board member other than the Principal Member may be appointed on a full-time basis or on a part-time basis.

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359CA Acting appointments

The Minister may, by written instrument, appoint a person to act as a Board member:

(a) during a vacancy in the office of a Board member (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Board member:

(i) in the case of a full-time Board member—is absent from duty or from Australia; or

(ii) in the case of a full-time or part-time Board member—is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

359CB Remuneration

(1) A Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Board member is to be paid the remuneration that is prescribed by the regulations.

(2) A Board member is to be paid the allowances that are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

359CC Leave of absence

(1) A full-time Board member has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant a full-time Board member leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

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359CD Other paid work

A full-time Board member must not engage in paid work outside the duties of the Board member without the Minister's approval.

359CE Other terms and conditions

A Board member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

359CF Resignation

(1) A Board member may resign the Board member's appointment by giving the Governor-General a written resignation.

(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

359CG Termination of appointment

(1) The Governor-General may terminate the appointment of a Board member:
  (a) for misbehaviour; or
  (b) if the Board member is unable to perform the duties of the Board member's office because of physical or mental incapacity.

(2) The Governor-General must terminate the appointment of a Board member if:
  (a) the Board member:
    (i) becomes bankrupt; or
    (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    (iii) compounds with the Board member's creditors; or

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(iv) makes an assignment of the Board member's remuneration for the benefit of the Board member's creditors; or

(b) in the case of a full-time Board member—the Board member:

(i) is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(ii) engages, except with the Minister's approval, in paid work outside the duties of the member's office (see section 359CD); or

(c) the Board member fails, without reasonable excuse, to comply with section 359CI (disclosure of interests).

359CH Suspension of Board members

(1) The Minister may suspend the appointment of a Board member:

(a) for misbehaviour; or

(b) if the Board member is unable to perform the duties of the Board member's office because of physical or mental incapacity.

(2) If the Minister suspends the appointment of a Board member, the Governor-General may, on the recommendation of the Minister:

(a) terminate the appointment of the Board member under subsection 359CG(1); or

(b) direct that the suspension of the Board member continue for such further period as the Governor-General specifies; or

(c) direct that the suspension of the Board member terminate.

(3) The suspension of the appointment of a Board member does not affect any entitlement of the Board member to be paid remuneration and allowances.

359CI Disclosure of interests

(1) This section applies in relation to a Board member who is one of the Board members who constitute, or are deemed to constitute, the

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Board for the purposes of a review by the Board under Part 4 of Chapter 8.

(2) If the Board member has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of the Board member's functions in relation to the review, the Board member must disclose the interest to the applicant in the review and to the Commission.

(3) The disclosure must be made as soon as possible after the relevant facts have come to the Board member's knowledge.

(4) The Board member must not take part in the review, or exercise any powers in relation to the review, unless the applicant in the review, and the Commission, consent to the Board member doing so.

(5) If the Principal Member becomes aware that the Board member has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of the Board member's functions in relation to the review:

(a) if the Principal Member considers that the Board member should not take part, or should not continue to take part, in the review—the Principal Member must give a direction to the Board member accordingly; or

(b) in any other case—the Principal Member must cause the interest of the Board member to be disclosed to the applicant in the review and to the Commission.

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Division 2—Procedures of the Board

359CJ Constitution of Board for exercise of powers

(1) Subject to subsections (2) and (3), for the purposes of a review by the Board under Part 4 of Chapter 8, the Board must be constituted by:
  (a) the Principal Member or a Senior Member; and
  (b) a Services member; and
  (c) one other Board member.

(2) The Board may, for the purposes of a particular review, be constituted by:
  (a) the Principal Member; and
  (b) a Senior Member; and
  (c) a Services member.

(3) The Board may, for the purposes of a particular review, or of a review included in a particular class of reviews, be constituted by:
  (a) the Principal Member or a Senior Member; or
  (b) one Board member, not being the Principal Member or a Senior Member;

only.

359CK Management of administrative affairs of Board

(1) The Principal Member is responsible for managing the administrative affairs of the Board.

(2) In the management of the administrative affairs of the Board, the Principal Member is assisted by the National Registrar.

(3) The National Registrar has power to do all things necessary or convenient to be done for the purpose of assisting the Principal Member.

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(4) In particular, the National Registrar may act on behalf of the Principal Member in relation to the administrative affairs of the Board.

(5) The Principal Member may give the National Registrar written directions regarding the exercise of the National Registrar's powers under this Act.

Note: A direction under subsection (5) is not a legislative instrument (see section 359DD).

359CL Arrangement of business of Board

(1) The Principal Member is responsible for ensuring the expeditious and efficient discharge of the business of the Board.

(2) Without limiting subsection (1), the Principal Member may give written directions as to:

(a) the operations of the Board generally; and
(b) the operations of the Board at a particular place; and
(c) the procedure of the Board generally; and
(d) the procedure of the Board at a particular place; and
(e) the conduct of reviews by the Board under Part 4 of Chapter 8; and
(f) the arrangement of the business of the Board; and
(g) the places in Australia at which the Board may sit; and
(h) the provision of documents under section 352E, including documents that are or are not required to be lodged under that section.

Note: A direction under subsection (2) is not a legislative instrument (see section 359DD).

359CM Board members to constitute Board for purposes of a review

(1) This section applies in relation to reviews by the Board under Part 4 of Chapter 8.

(2) The Principal Member may give directions, from time to time, in writing, as to the persons who are to constitute the Board:

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(a) for the purpose of a particular review or particular reviews; or

(b) for the purposes of reviews listed for hearing at a specified place during a specified period, or during specified periods, being reviews so listed for hearing by, or in accordance with the directions of, the Principal Member.

(3) If the Board, constituted in accordance with a direction given under subsection (2):

(a) completes its hearing of a review listed for hearing at the place and during a period specified in that direction; but

(b) does not make its decision on the review;

then, unless the Principal Member otherwise directs, the Board members who constitute the Board in accordance with that direction, by force of this subsection, continue to constitute the Board for the purpose of making a decision in writing on that review.

Note: A direction under this section is not a legislative instrument (see section 359DD).

359CN Board member ceasing to be Board member etc.

(1) If one of the Board members constituting the Board, by virtue of a direction under section 359CM, for the purposes of a review by the Board under Part 4 of Chapter 8:

(a) ceases to be a Board member; or

(b) ceases, for any reason, to be available for the purposes of a review at the place where the review is to be, or is being, heard or continued;

the 2 remaining Board members are deemed to constitute the Board by virtue of the direction given under section 359CM until the Principal Member re-allocates the review, under that section, for further hearing.

(2) If the Board member referred to in subsection (1) is the Principal Member or a Senior Member, the Principal Member must direct

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which of the 2 remaining Board members is to preside at any hearing of the review.

(3) If:

(a) the hearing of a review has been commenced but has not been completed before the Board; and

(b) the review has not been re-allocated as mentioned in subsection (1);

the review may be listed for further hearing at a particular place and time in accordance with directions given by the Principal Member with respect to the listing of reviews for hearing or further hearing and, if it is so listed:

(c) the Board constituted by the Board members directed to constitute the Board for the hearing of reviews listed for hearing at that place during the period in which that time occurs may continue the hearing of the review and decide the review; and

(d) the review is deemed to have been re-allocated for further hearing and decision accordingly.

(4) The Board to which a review is deemed to have been re-allocated under subsection (3) may, but need not, include a Board member who was one of the Board members who constituted the Board for the purpose of hearing the review before the re-allocation took place.

(5) If a review re-allocated as mentioned in subsection (1), or deemed to have been re-allocated under subsection (3), had been commenced, but had not been completed, before the re-allocation took place, the Board as constituted for the purpose of that review by virtue of that re-allocation may, in the review before it, have regard to any record of the review before the Board as previously constituted.

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Part 4—Other matters

359D Staff

(1) Any staff required to assist the Board are to be persons engaged under the *Public Service Act 1999* and made available for the purpose by the Secretary.

(2) Without limiting subsection (1), the staff required to assist the Board may include one or more of the following:
  (a) a National Registrar;
  (b) Registrars;
  (c) Deputy Registrars;
  (d) Conference Registrars.

359DA Delegation by Principal Member

(1) The Principal Member may, in writing, delegate all or any of the Principal Member's functions or powers under this Act to:
  (a) a Senior Member; or
  (b) an acting Senior Member.

(2) The Principal Member may, in writing, delegate all or any of the Principal Member's functions or powers under the following provisions to the National Registrar:
  (a) section 352H (notice of hearing etc.);
  (b) section 352J (procedure of Board);
  (c) section 353C (dismissal of applications);
  (d) section 353E (circumstances in which application may be reinstated);
  (e) section 359CL (arrangement of business of Board);
  (f) section 359CM (Board members to constitute Board for purposes of a review);
  (g) section 359CN (Board member ceasing to be Board member etc.).

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(3) The Principal Member may, in writing, delegate all or any of the Principal Member's functions or powers under subsection 352J(8) (requests by Principal Member), section 353C (dismissal of applications) or section 353E (circumstances in which application may be reinstated) to:

(a) a Registrar; or

(b) a Deputy Registrar; or

(c) a Conference Registrar.

(4) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Principal Member.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

359DB Annual report

The Principal Member must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the Board's activities during the financial year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

359DC Oath or affirmation of office

(1) A person who is appointed or re-appointed as a Board member, or to act as a Board member, must take an oath or make an affirmation, in the applicable form set out in the following table, before discharging the duties of the office.

Form of oath or affirmation

Item	If the person is …	the applicable form is …
1	taking an oath	I, , do swear that I will be faithful and bear true allegiance to (*insert name of the Sovereign*), (*insert applicable pronoun, such as 'His' or 'Her'*)

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Form of oath or affirmation		
Item	**If the person is …**	**the applicable form is …**
		Heirs and Successors according to law, that I will well and truly serve (*insert applicable pronoun, such as 'Him' or 'Her'*) in the office of Principal Member (or Senior Member or member) of the Veterans' Review Board and that I will faithfully and impartially perform the duties of that office without fear or favour, affection or ill-will. So help me, God.
2	making an affirmation	I, , do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to (*insert name of the Sovereign*), (*insert applicable pronoun, such as 'His' or 'Her'*) Heirs and Successors according to law, that I will well and truly serve (*insert applicable pronoun, such as 'Him' or 'Her'*) in the office of Principal Member (or Senior Member or member) of the Veterans' Review Board and that I will faithfully and impartially perform the duties of that office without fear or favour, affection or ill-will.

(2) The oath must be taken, or the affirmation must be made, before a justice of the peace or a commissioner for taking affidavits.

359DD Instruments that are not legislative instruments

The following are not legislative instruments:

(a) a direction under subsection 359CK(5) (management of administrative affairs of Board);

(b) a direction under subsection 359CL(2) (arrangement of business of Board);

(c) a direction under section 359CM (Board members to constitute Board for purposes of a review).

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360CO Voting at meetings

(1) A question arising at a meeting of the Commission is to be determined by a majority of the votes of the Commissioners present and voting.

(2) The person presiding at a meeting of the Commission has a deliberative vote and, if the votes are equal, a casting vote.

360CP Conduct of meetings

The Commission may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which Commissioners may participate in meetings.

360CQ Minutes

The Commission must keep minutes of its meetings.

360CR Decisions without meetings

(1) The Commission is taken to have made a decision at a meeting if:
  (a) without meeting, a majority of the Commissioners entitled to vote on the proposed decision indicate agreement with the decision; and
  (b) that agreement is indicated in accordance with the method determined by the Commission under subsection (2); and
  (c) all the Commissioners were informed of the proposed decision, or reasonable efforts were made to inform all the Commissioners of the proposed decision.

(2) Subsection (1) applies only if the Commission:
  (a) has determined that it may make decisions of that kind without meeting; and
  (b) has determined the method by which Commissioners are to indicate agreement with proposed decisions.

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(3) For the purposes of paragraph (1)(a), a Commissioner is not entitled to vote on a proposed decision if the Commissioner would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Commission.

(4) The Commission must keep a record of decisions made in accordance with this section.

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Part 4—Other matters

360D Staff

(1) Any staff required to assist the Commission are to be persons engaged under the *Public Service Act 1999* and made available for the purpose by the Secretary.

(2) When performing services for the Commission, the staff are subject to the directions of the Commission.

360DA Contractors

The Commission may engage persons under a written agreement to assist the Commission to perform or exercise the functions or powers of the Commission.

360DB Delegation by the Commission

(1) The Commission may, in writing, delegate all or any of its functions or powers (other than the Commission's power under subsection 6B(5) of this Act or subsection 69B(6) of the VEA) to:

(a) a Commissioner; or

(b) a member of the staff assisting the Commission; or

(c) a person engaged by the Commission under section 360DA.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

(2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Commission.

360DC Annual report

The Commission must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to

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the Parliament, a report on the Commission's activities during the financial year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

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Chapter 9A—Repatriation Medical Authority

Part 1—Simplified outline of this Chapter

370A Simplified outline of this Chapter

The Repatriation Medical Authority is continued in existence under Part 2 of this Chapter.

Part 2 also sets out the Authority's functions. The Authority's main function is to determine Statements of Principles. A Statement of Principles is an instrument that sets out all factors related to service that have been found to cause specific injuries, diseases or death.

Part 3 sets out the process for determining Statements of Principles.

Part 4 deals with the administration of the Authority, and includes provisions relating to Authority members, acting Authority members and meetings of the Authority.

Part 5 deals with staff, consultants, delegations by the Chair of the Authority and the Authority's annual report.

Part 7 of the *Acts Interpretation Act 1901* also has provisions that are relevant to Authority members and acting Authority members.

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Part 2—Establishment of Authority

370B Establishment

(1) The Repatriation Medical Authority that was, immediately before the commencement of this section, in existence by virtue of the VEA, is continued in existence under the same name.

(2) The Authority:
  (a) is a body corporate with perpetual succession; and
  (b) must have a seal; and
  (c) may acquire, hold and dispose of real and personal property; and
  (d) may sue and be sued in its corporate name.

(3) Debts incurred by the Authority in the performance of its functions are, for all purposes, taken to be debts incurred by the Commonwealth.

370BA Application of the *Public Governance, Performance and Accountability Act 2013* to the Authority

Despite paragraph 10(1)(d) of the *Public Governance, Performance and Accountability Act 2013* and the definition of ***Department of State*** in section 8 of that Act, the Authority is not a Commonwealth entity for the purposes of that Act and is taken to be part of the Department for those purposes.

Note: This means that the Authority members are officials of the Department for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

370BB Functions and powers of the Authority

(1) The functions of the Authority are:
  (a) to determine Statements of Principles; and

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(b) any other function conferred on the Authority by this Act, the regulations or any other law of the Commonwealth.

(2) The Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

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Part 3—Statements of Principles

Division 1—Preliminary

370C Meaning of *related to service*

A factor causing, or contributing to, an injury, disease or death is ***related to service*** rendered by a person if:

(a) it resulted from an occurrence that happened while the person was rendering that service; or

(b) it arose out of, or was attributable to, that service; or

(c) it was contributed to in a material degree by, or was aggravated by, that service; or

(d) in the case of a factor causing, or contributing to, an injury—it resulted from an accident that would not have occurred:

(i) but for the rendering of that service by the person; or

(ii) but for changes in the person's environment consequent upon the person having rendered that service; or

(e) in the case of a factor causing, or contributing to, a disease—it would not have occurred:

(i) but for the rendering of that service by the person; or

(ii) but for changes in the person's environment consequent upon the person having rendered that service; or

(f) in the case of a factor causing, or contributing to, the death of a person—it was due to an accident that would not have occurred, or to a disease that would not have been contracted:

(i) but for the rendering of that service by the person; or

(ii) but for changes in the person's environment consequent upon the person having rendered that service; or

(g) it resulted from an accident that occurred while the person was travelling, while rendering that service but otherwise than in the course of duty, on a journey:

(i) to a place for the purpose of performing duty; or

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(ii) away from a place of duty upon having ceased to perform duty.

370CA Meaning of *sound medical-scientific evidence*

Information about a particular kind of injury, disease or death is taken to be ***sound medical-scientific evidence*** if:

(a) the information:

(i) is consistent with material relating to medical science that has been published in a medical or scientific publication and has been, in the opinion of the Authority, subjected to a peer review process; or

(ii) in accordance with generally accepted medical practice, would serve as the basis for the diagnosis and management of a medical condition; and

(b) in the case of information about how that kind of injury, disease or death may be caused—meets the applicable criteria for assessing causation currently applied in the field of epidemiology.

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Division 2—Determining Statements of Principles

370CB Determining Statement of Principles—reasonable hypothesis

(1) If the Authority is of the view that there is sound medical-scientific evidence that indicates that a particular kind of injury, disease or death can be related to one of the following kinds of service rendered by a person:

(a) warlike service;

(b) non-warlike service;

(c) British nuclear test defence service;

(d) hazardous service;

the Authority must, by legislative instrument, determine a Statement of Principles in respect of that kind of injury, disease or death.

Note 1: The Authority is required to make and amend a Statement of Principles in certain circumstances (see section 370CG).

Note 2: The Authority must also make a Statement of Principles for determining claims using the reasonable hypothesis standard of proof when directed by the Review Council (see subsection 370CN(1)).

Note 3: This Act applies in relation to operational service as if it were warlike service or non-warlike service (see section 443).

(2) The Statement of Principles must set out:

(a) the factors that must as a minimum exist; and

(b) which of those factors must be related to service rendered by a person;

before it can be said that a reasonable hypothesis has been raised connecting an injury, disease or death of that kind with the circumstances of that service.

370CC Determining Statement of Principles—balance of probabilities

(1) If the Authority is of the view that on the sound medical-scientific evidence available it is more probable than not that a particular

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kind of injury, disease or death can be related to one of the following kinds of service rendered by a person:

(a) peacetime service;

(b) service to which a claim mentioned in subsection 120B(1) of the VEA relates;

the Authority must, by legislative instrument, determine a Statement of Principles in respect of that kind of injury, disease or death.

Note 1: The Authority is required to make and amend a Statement of Principles in certain circumstances (see section 370CG).

Note 2: The Authority must also make a Statement of Principles for determining claims using the balance of probabilities standard of proof when directed by the Review Council (see subsection 370CN(3)).

(2) The Statement of Principles must set out:

(a) the factors that must exist; and

(b) which of those factors must be related to service rendered by a person;

before it can be said that, on the balance of probabilities, an injury, disease or death of that kind is connected with the circumstances of that service.

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Division 3—Investigations by the Authority

Subdivision A—When investigations must be carried out

370CD Initial investigation

If the Authority:

(a) receives a request under section 370CH to carry out an investigation in respect of a particular kind of injury, disease or death; or

(b) of its own initiative, decides that a particular kind of injury, disease or death ought to be investigated to find out whether a Statement of Principles may be determined in respect of it;

the Authority must carry out an investigation to obtain information that would enable the Authority to establish:

(c) how the injury may be suffered or sustained, the disease may be contracted or the death may occur; and

(d) the extent (if any) to which the injury, disease or death may be a service injury, a service disease or a service death.

Note 1: After carrying out an investigation under this section, the Authority must either make a Statement of Principles, or make a declaration stating it does not propose to make a Statement of Principles (see section 370CG).

Note 2: This section does not mean that the Authority must carry out an investigation before it can determine a Statement of Principles under section 370CB or 370CC.

370CE Subsequent investigation

(1) If the Authority:

(a) receives a request under section 370CH to review:

(i) some or all of the contents of a Statement of Principles; or

(ii) a decision of the Authority not to make a Statement of Principles in respect of a particular kind of injury, disease or death; or

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(b) thinks that there are grounds for such a review; or

(c) is directed by the Review Council under subsection 380CA(2) to carry out an investigation in respect of a particular kind of injury, disease or death;

the Authority must carry out an investigation to find out if there is new information available about:

(d) how the injury may be suffered or sustained, the disease may be contracted or the death may occur; or

(e) the extent (if any) to which the injury, disease or death may be a service injury, a service disease or a service death.

Note: The Authority is not required to carry out an investigation in certain circumstances (see section 370CF).

(2) If the investigation:

(a) relates to a request under section 370CH to review some of the contents of a Statement of Principles; or

(b) is one to which paragraph (1)(b) of this section applies and that relates to some of the contents of a Statement of Principles; or

(c) is carried out because of a direction under subsection 380CA(2) by the Review Council, following a request to the Review Council under section 380CC to review the Authority's refusal to carry out an investigation relating to a request under section 370CH, to review some of the contents of a Statement of Principles;

the Authority may limit its investigation to matters relating to those contents.

Note: After carrying out an investigation under this section, the Authority must either make or amend a Statement of Principles, or make a declaration stating it does not propose to make or amend a Statement of Principles (see section 370CG).

370CF Circumstances when investigation not required

(1) If:

(a) the Authority has carried out an investigation in respect of a particular kind of injury, disease or death; and

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(b) within 12 months after the Authority has, at the end of the investigation:

(i) determined or amended a Statement of Principles; or

(ii) declared that it does not propose to make or amend a Statement of Principles;

a person or organisation asks the Authority under section 370CH to review:

(iii) some or all of the contents of the Statement of Principles; or

(iv) its decision not to make a Statement of Principles; and

(c) the Authority thinks that there are no grounds for such a review;

the Authority may decide not to carry out an investigation in respect of that kind of injury, disease or death.

(2) The Authority may decide not to carry out an investigation in respect of a request for a review of a kind mentioned in paragraph 370CH(2)(b) or (c) if:

(a) the request does not state the grounds on which the review is sought; or

(b) the Authority considers that the request does not identify sufficient relevant information:

(i) to support the grounds on which the review is sought; or

(ii) to otherwise justify the review; or

(c) the request is vexatious or frivolous.

(3) If the Authority decides under subsection (1) or (2) not to carry out an investigation, it must inform the person or organisation in writing of the decision, stating the reasons for it.

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Subdivision B—Action following investigation

370CG Action following investigation

Decision to determine etc. a Statement of Principles

(1) If, after carrying out an investigation under section 370CD, the Authority is of the view that there is sound medical-scientific evidence on which it can rely to determine a Statement of Principles under section 370CB or 370CC in respect of a kind of injury, disease or death, the Authority must do so as soon as practicable.

(2) If, after carrying out an investigation under section 370CE, the Authority is of the view that there is a new body of sound medical-scientific evidence that, together with sound medical-scientific evidence previously considered by the Authority, justifies the determination, or amendment, of a Statement of Principles under section 370CB or 370CC in respect of a kind of injury, disease or death that can be related to service rendered by a person, the Authority must do one or more of the following as the case requires:
   (a) determine a Statement of Principles under section 370CB or 370CC in respect of that kind of injury, disease or death;
   (b) amend an existing Statement of Principles in respect of that kind of injury, disease or death;
   (c) revoke an existing Statement of Principles, and determine a new Statement of Principles under section 370CB or 370CC, in respect of that kind of injury, disease or death.

Decision not to determine etc. Statement of Principles

(3) If, after carrying out an investigation under section 370CD in respect of a particular kind of injury, disease or death, the Authority is of the view:
   (a) that there is no sound medical-scientific evidence on which it can rely to determine a Statement of Principles under

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section 370CB or 370CC in respect of that kind of injury, disease or death; or

(b) that the sound medical-scientific evidence on which it can rely is insufficient to allow it to do so;

the Authority must make a declaration in writing:

(c) stating that it does not propose to make a Statement of Principles; and

(d) giving the reasons for its decision.

(4) If, after carrying out an investigation under section 370CE in respect of a particular kind of injury, disease or death, the Authority is of the view:

(a) that there is no new sound medical-scientific evidence about that kind of injury, disease or death; or

(b) that the new sound medical-scientific evidence available is not sufficient to justify the making of a Statement of Principles, or an amendment of the Statement of Principles already determined in respect of that kind of injury, disease or death;

the Authority must make a declaration in writing:

(c) stating that it does not propose to make a Statement of Principles, or amend the Statement of Principles already determined (as the case may be); and

(d) giving the reasons for its decision.

Notice of decision not to determine etc. Statement of Principles

(5) If the Authority decides not to make, or not to review or not to amend, a Statement of Principles, it must, within 14 days, notify the Commission in writing of its decision.

(6) If the decision is made following a request from a person or organisation under section 370CH, the Authority must also notify the person or organisation in writing of its decision.

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Decisions not legislative instruments

(7) A declaration under subsection (3) or (4) is not a legislative instrument.

Subdivision C—Requests for investigation or review

370CH Request for investigation or review

(1) Any of the following may request the Authority to carry out an investigation or review of a kind mentioned in subsection (2):
  (a) the Commission;
  (b) a person eligible to make a claim for compensation under section 319;
  (c) an organisation representing veterans, Australian mariners or members of the Forces (all within the meaning of the VEA);
  (d) an organisation representing members or their dependants.

(2) For the purposes of subsection (1), the kinds of investigation or review are as follows:
  (a) an investigation under section 370CD in respect of a particular kind of injury, disease or death;
  (b) a review of a decision of the Authority not to make a Statement of Principles in respect of a particular kind of injury, disease or death following an investigation under section 370CD;
  (c) a review of some or all of the contents of a Statement of Principles.

(3) A request under subsection (1) must be made:
  (a) in a form approved by the Authority; and
  (b) in a manner approved by the Chair of the Authority.

(4) If the request is a request for a review of a kind mentioned in paragraph (2)(b) or (c), the request must also:
  (a) state the grounds on which the review is sought; and
  (b) identify any information relied on to support those grounds.

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370CI Authority may consolidate requests

If:

(a) 2 or more requests for review are made under section 370CH; and

(b) the requests are in relation to the same injury, disease or death;

the Authority may carry out one investigation in relation to those requests.

Subdivision D—Conduct of investigations

370CJ Notice of investigation

(1) As soon as practicable after the Authority:

(a) has been asked under section 370CH to carry out:

(i) an investigation; or

(ii) a review of a decision of the Authority not to make a Statement of Principles; or

(iii) a review of some or all of the contents of a Statement of Principles;

regarding a particular kind of injury, disease or death; or

(b) has decided on its own initiative to carry out such an investigation or such a review;

the Authority must, by notifiable instrument:

(c) give notice stating that the Authority intends to carry out an investigation in respect of that kind of injury, disease or death; and

(d) invite persons or organisations authorised under subsection 370CL(1) to do so to make written submissions to the Authority.

(2) The notifiable instrument under subsection (1):

(a) must specify:

(i) the date on which the Authority will hold its first meeting for the purposes of the investigation; and

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(ii) the date by which all submissions must have been received by the Authority; and

(b) must be made at least 28 days before the date of the first meeting of the Authority.

(3) A failure to comply with paragraph (2)(a) does not affect the validity of the notifiable instrument.

370CK Powers of Authority with respect to investigations

(1) The Authority may not, for the purposes of an investigation, carry out any new research work (including any test or experiment).

(2) The Authority may, for the purposes of an investigation, ask the Secretary:

(a) to forward to the Authority any information:

(i) in the possession of the Secretary; or

(ii) that the Secretary may obtain;

relating to the kind of injury, disease or death under investigation; or

(b) to carry out research (including any test or experiment) to obtain, confirm or disprove specific information about the kind of injury, disease or death under investigation and forward a report to the Authority.

(3) In forming any view during the investigation, the Authority:

(a) may rely only on sound medical-scientific evidence:

(i) that has been submitted to it; or

(ii) that it has obtained on its own initiative or from the Secretary (under subsection (2)) or from a consultant; and

(b) must consider and evaluate all the evidence so made available to it.

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370CL Submissions to the Authority

(1) If the Authority is carrying out an investigation under section 370CD or 370CE, any person or organisation referred to in any of paragraphs 370CH(1)(a) to (d) may make a submission in writing to the Authority on any matter (other than a legal matter) relevant to the investigation.

(2) A person having expertise in a field relevant to the investigation may make a submission in writing to the Authority on any matter (other than a legal matter) within the person's expertise that is relevant to the investigation.

(3) If an individual, the Commission or an organisation has made a written submission, the individual or the individual's representative, or a representative of the Commission or of the organisation may, subject to subsection (4), appear before the Authority to make an oral submission complementing the written submission. The oral submission may not cover any legal matter.

(4) A person or organisation may not be represented before the Authority by a legal practitioner.

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Division 4—Matters relating to reviews by the Review Council

370CM Authority to send information to Review Council

The Authority must, within 28 days after being notified that the Review Council has been asked to review:

(a) a Statement of Principles; or

(b) a decision of the Authority not to determine a Statement of Principles in respect of a particular kind of injury, disease or death; or

(c) a decision of the Authority not to amend a Statement of Principles in respect of a particular kind of injury, disease or death; or

(d) a decision of the Authority under subsection 370CF(1) not to carry out an investigation in respect of a particular kind of injury, disease or death;

send to the Review Council a copy of all the information that was available to the Authority when it:

(e) determined, amended, or last amended, the Statement of Principles; or

(f) decided, or last decided, not to determine, or not to amend, a Statement of Principles in respect of that kind of injury, disease or death; or

(g) decided not to carry out the investigation.

370CN Action following review by Review Council

Determining a Statement of Principles where directed by the Review Council—reasonable hypothesis

(1) If, after reviewing a decision of the Authority not to determine a Statement of Principles under section 370CB in respect of a particular kind of injury, disease or death, the Review Council directs the Authority under subsection 380C(4) to determine such a

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Statement of Principles, the Authority must, by legislative instrument, determine a Statement of Principles in respect of that kind of injury, disease or death.

(2) The Statement of Principles must set out, in accordance with the direction of the Review Council:

(a) the factors that must as a minimum exist; and

(b) which of those factors must be related to service rendered by a person;

before it can be said that a reasonable hypothesis has been raised connecting an injury, disease or death of that kind with the circumstances of that service.

Determining a Statement of Principles where directed by the Review Council—balance of probabilities

(3) If, after reviewing a decision of the Authority not to determine a Statement of Principles under section 370CC in respect of a particular kind of injury, disease or death, the Review Council directs the Authority under subsection 380C(4) to determine such a Statement of Principles, the Authority must, by legislative instrument, determine a Statement of Principles in respect of that kind of injury, disease or death.

(4) The Statement of Principles must set out, in accordance with the direction of the Review Council:

(a) the factors that must exist; and

(b) which of those factors must be related to service rendered by a person;

before it can be said that, on the balance of probabilities, an injury, disease or death of that kind is connected with the circumstances of that service.

Amending a Statement of Principles where directed by the Review Council

(5) If, under subsection 380C(4), the Review Council directs the Authority to amend a Statement of Principles in respect of a kind

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of injury, disease or death, the Authority must do so in accordance with the directions of the Review Council.

Requirements where Statement of Principles made or amended under this section

(6) A Statement of Principles as determined or amended under this section:

(a) is taken to have commenced on the day on which the Review Council made the notifiable instrument under subsection 380C(4) directing the Authority to do so; and

(b) must specify that day.

(7) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply in relation to a Statement of Principles determined or amended under this section.

Amendment and revocation of Statement of Principles made or amended under this section

(8) A Statement of Principles, as determined or amended under this section, may be amended or revoked by the Authority in the same way as if it had been determined or amended under section 370CB or 370CC, as applicable.

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Part 4—Administration

Division 1—Membership etc.

370D Membership

The Authority consists of the Chair of the Authority and 4 other members.

370DA Appointment of Authority members

(1) The Authority members are to be appointed by the Minister by written instrument.

Note: An Authority member may be reappointed (see section 33AA of the *Acts Interpretation Act 1901*).

(2) The Minister must not appoint a person as Chair of the Authority unless the person is a medical practitioner, or a medical scientist, with at least 10 years' experience.

(3) In making appointments, the Minister must ensure that at least one Authority member has at least 5 years' experience in the field of epidemiology.

370DB Basis and period of appointment

(1) An Authority member is to be appointed on a part-time basis.

(2) An Authority member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

370DC Acting appointments

The Minister may, by written instrument, appoint an Authority member to act as the Chair of the Authority:

(a) during a vacancy in the office of the Chair (whether or not an appointment has previously been made to the office); or

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(b) during any period, or during all periods, when the Chair:
(i) is absent from duty; or
(ii) is, for any reason, unable to perform the duties of the office.

370DD Remuneration

(1) An Authority member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Authority member is to be paid the remuneration that is prescribed under subsection (4).

(2) An Authority member is to be paid the allowances that are prescribed under subsection (4).

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

(4) The Minister may, by legislative instrument, prescribe:
(a) remuneration for the purposes of subsection (1); and
(b) allowances for the purposes of subsection (2).

370DE Other terms and conditions

An Authority member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

370DF Resignation

(1) An Authority member may resign the Authority member's appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

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370DG Termination of appointment

The Minister may terminate the appointment of an Authority member:

(a) for misbehaviour; or

(b) if the Authority member is unable to perform the duties of the Authority member's office because of physical or mental incapacity; or

(c) if the Authority member:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with the Authority member's creditors; or

(iv) makes an assignment of the Authority member's remuneration for the benefit of the Authority member's creditors; or

(d) the Authority member fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

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Division 2—Procedures of the Authority

370DH Convening meetings

(1) The Authority must hold such meetings as are necessary for the efficient performance of its functions.

(2) The Chair of the Authority may convene a meeting at any time.

370DI Presiding at meetings

The Chair of the Authority must preside at all meetings of the Authority.

370DJ Quorum

(1) At a meeting of the Authority, a quorum is constituted by 3 Authority members.

(2) However, if:

(a) an Authority member is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations, or to take part in any decision, of the Authority with respect to a particular matter; and

(b) when the Authority member leaves the meeting concerned there is no longer a quorum present;

the remaining Authority members constitute a quorum for the purposes of any deliberation or decision at that meeting with respect to that matter.

370DK Voting at meetings

(1) A question arising at a meeting of the Authority is to be determined by a majority of the votes of the Authority members present and voting.

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(2) The Chair of the Authority has a deliberative vote but, if the votes are equal, does not have a casting vote.

370DL Conduct of meetings

The Authority may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which Authority members may participate in meetings.

370DM Minutes

The Authority must keep minutes of its meetings.

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Part 5—Other matters

370E Staff

(1) Any staff required to assist the Authority are to be persons engaged under the *Public Service Act 1999* and made available for the purpose by the Secretary.

(2) When performing services for the Authority, the staff are subject to the directions of the Authority.

370EA Consultants

(1) The Authority may engage consultants to provide expert advice to the Authority about any disease, injury or death that the Authority is investigating.

(2) The Authority must not engage a consultant without the approval of the Minister.

370EB Delegation by Chair of the Authority

(1) The Chair of the Authority may, in writing, delegate the Chair's power under subsection 370DH(2) to:

(a) an Authority member; or

(b) a member of the staff assisting the Authority.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

(2) In performing a delegated power, the delegate must comply with any written directions of the Chair.

370EC Annual report

The Authority must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to

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the Parliament, a report on the Authority's activities during the financial year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

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Chapter 9B—Specialist Medical Review Council

Part 1—Simplified outline of this Chapter

380A Simplified outline of this Chapter

The Specialist Medical Review Council is continued in existence under Part 2 of this Chapter.

Part 2 also sets out the Review Council's functions. The Review Council's main function is to review decisions of the Authority in relation to Statements of Principles.

Part 3 sets out the process for reviews undertaken by the Review Council.

Part 4 deals with the administration of the Review Council, and includes provisions relating to Councillors and meetings of the Review Council.

Part 5 deals with staff and delegations by the Convener of the Review Council.

Part 7 of the *Acts Interpretation Act 1901* also has provisions that are relevant to Councillors.

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Part 2—Establishment of Review Council

380B Establishment

(1) The Specialist Medical Review Council that was, immediately before the commencement of this section, in existence by virtue of the VEA, is continued in existence under the same name.

(2) The Review Council:
  (a) is a body corporate with perpetual succession; and
  (b) must have a seal; and
  (c) may acquire, hold and dispose of real and personal property; and
  (d) may sue and be sued in its corporate name.

(3) Debts incurred by the Review Council in the performance of its functions are, for all purposes, taken to be debts incurred by the Commonwealth.

380BA Application of the *Public Governance, Performance and Accountability Act 2013* to the Review Council

Despite paragraph 10(1)(d) of the *Public Governance, Performance and Accountability Act 2013* and the definition of ***Department of State*** in section 8 of that Act, the Review Council is not a Commonwealth entity for the purposes of that Act and is taken to be part of the Department for those purposes.

Note: This means that the Councillors are officials of the Department for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

380BB Functions and powers of the Review Council

(1) The functions of the Review Council are:
  (a) to review decisions made by the Authority in relation to Statements of Principles; and

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(b) any other function conferred on the Review Council by this Act, the regulations or any other law of the Commonwealth.

(2) The Review Council has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

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Part 3—Reviews by the Review Council

Division 1—Review of decisions of the Authority

380C Review of decision relating to Statement of Principles

When review is to be carried out

(1) If the Review Council is asked under section 380CB to review:

(a) some or all of the contents of a Statement of Principles in respect of a particular kind of injury, disease or death; or

(b) a decision of the Authority not to determine a Statement of Principles in respect of a particular kind of injury, disease or death; or

(c) a decision of the Authority not to amend a Statement of Principles in respect of a particular kind of injury, disease or death;

then, subject to subsection (2), the Review Council must, for that purpose, carry out a review of all the information that was available to the Authority when it:

(d) determined, amended, or last amended, the Statement of Principles; or

(e) decided, or last decided, not to determine, or not to amend, a Statement of Principles;

in respect of that kind of injury, disease or death.

(2) If the Review Council has been asked to review some or all of the contents of a Statement of Principles, the Review Council may carry out a review under subsection (1) only if:

(a) the period within which the Statement of Principles may be disallowed under section 42 of the *Legislation Act 2003* has ended; and

(b) the Statement of Principles has not been disallowed.

(3) If:

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(a) the Review Council has been asked to review some or all of the contents of a Statement of Principles in respect of a particular kind of injury, disease or death; and

(b) there is another Statement of Principles in force in respect of that kind of injury, disease or death, but the Review Council has not been asked to review some or all of the contents of that other Statement of Principles;

then the Review Council must also review that other Statement of Principles by reviewing the information subsection (1) requires it to review in reviewing the Statement of Principles it has been asked to review.

Outcome of review

(4) If, after carrying out the review, the Review Council is of the view that there is sound medical-scientific evidence on which the Authority could have relied:

(a) to amend either or both of the Statements of Principles in force in respect of that kind of injury, disease or death; or

(b) to determine a Statement of Principles in respect of that kind of injury, disease or death;

the Review Council must, by notifiable instrument, make a declaration stating its views, setting out the evidence in support and:

(c) directing the Authority to amend either or both of the Statements of Principles, or determine a Statement of Principles (as the case may be), in accordance with the directions given by the Review Council; or

(d) remitting the matter for reconsideration by the Authority in accordance with any directions or recommendations of the Review Council.

(5) If, after carrying out the review, the Review Council is of the view:

(a) that there is no sound medical-scientific evidence that justifies the making of a Statement of Principles, or an amendment of either or both of the Statements of Principles, in respect of that kind of injury, disease or death; or

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(b) that the sound medical-scientific evidence available to the Authority is insufficient to justify the making of a Statement of Principles, or an amendment of either or both of the Statements of Principles, in respect of that kind of injury, disease or death;

the Review Council must, by notifiable instrument, make a declaration to that effect giving the reasons for its decision. The Review Council may include in the declaration any recommendation that it considers fit to make about any future investigation that the Authority may carry out in respect of that kind of injury, disease or death.

Notification of outcome of review

(6) The Review Council must give a copy of the notifiable instrument made under subsection (4) or (5) to:
(a) the person or organisation that asked for the review; and
(b) the Commission (if it is not the person referred to in paragraph (a) of this subsection); and
(c) the Authority.

380CA Review of decision not to carry out investigation

(1) If the Review Council is asked under section 380CC to review a decision of the Authority under subsection 370CF(1) not to carry out an investigation in respect of a particular kind of injury, disease or death, the Review Council must consider:
(a) the reasons given by the Authority for making the decision; and
(b) the information on which the Authority relied in making that decision; and
(c) the grounds on which the request for the review was made and any submission made in support of those grounds.

(2) If, after considering the matters referred to in paragraphs (1)(a), (b) and (c), the Review Council is of the view that:

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(a) there appears to be a new body of sound medical-scientific evidence in respect of that kind of injury, disease or death that has not been previously considered by the Authority; and

(b) that new body of evidence, together with the sound medical-scientific evidence available to the Authority, could justify the making of a Statement of Principles, or an amendment of the Statement of Principles already determined, in respect of that kind of injury, disease or death;

the Review Council must, by notifiable instrument, make a declaration to that effect giving the reasons for its decision and directing the Authority to carry out an investigation under subsection 370CE in respect of that kind of injury, disease or death. The Review Council may include in the declaration any recommendation or direction that the Review Council considers fit to make about the carrying out of the investigation.

(3) If, after considering the matters referred to in paragraphs (1)(a), (b) and (c), the Review Council is not of the view referred to in subsection (2) in respect of that kind of injury, disease or death, the Review Council must, by notifiable instrument, make a declaration:

(a) affirming the decision of the Authority not to carry out the investigation; and

(b) giving the reasons for its decision.

The Review Council may include in the declaration any recommendation that it considers fit to make about any future investigation that the Authority may carry out in respect of that kind of injury, disease or death.

(4) The Review Council must give a copy of the notifiable instrument made under subsection (2) or (3) to:

(a) the person or organisation that asked for the review; and

(b) the Commission (if it is not the person referred to in paragraph (a) of this subsection); and

(c) the Authority.

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Division 2—Requests for review

380CB Request for review of contents of Statement of Principles

(1) Subject to subsection (2), any of the following:

(a) the Commission;

(b) a person eligible to make a claim for compensation under section 319;

(c) an organisation representing veterans, Australian mariners or members of the Forces (all within the meaning of the VEA);

(d) an organisation representing members or their dependants;

may ask the Review Council to review:

(e) some or all of the contents of a Statement of Principles; or

(f) a decision of the Authority not to make, or not to amend, a Statement of Principles in respect of a particular kind of injury, disease or death.

(2) The request must be made:

(a) in the case of a request to review some or all of the contents of a Statement of Principles—within 3 months after the Statement of Principles was made, amended or last amended; or

(b) in any other case—within 3 months after the decision of the Authority.

(3) A request must:

(a) state the grounds on which the review is sought; and

(b) be made in a manner approved by the Convener of the Review Council.

(4) The Review Council must notify the Secretary and the Authority of the request within 28 days after receiving the request.

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380CC Request for review of decision of Authority not to carry out an investigation

(1) If:

(a) a person or organisation asks the Authority under section 370CH to review:

(i) some or all of the contents of a Statement of Principles in respect of a particular kind of injury, disease or death; or

(ii) the Authority's decision not to make a Statement of Principles in respect of a particular kind of injury, disease or death; and

(b) the Authority refuses under subsection 370CF(1) to carry out an investigation in respect of that kind of injury, disease or death;

the person or organisation may, within 3 months after the refusal, ask the Review Council to review the decision of the Authority not to carry out the investigation.

(2) The request must:

(a) state the grounds on which the review is sought; and

(b) be accompanied by any submission that the person or organisation wishes to submit in support of those grounds; and

(c) be made in a manner approved by the Convener of the Review Council.

(3) The Review Council must notify the Secretary and the Authority of the request within 28 days after receiving the request.

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Division 3—Conduct of investigations

380CD Notice of investigation

(1) As soon as practicable after the Review Council has been asked under section 380CB to review:

(a) a decision of the Authority not to make, or not to amend, a Statement of Principles in respect of a particular kind of injury, disease or death; or

(b) some or all of the contents of a Statement of Principles in respect of a particular kind of injury, disease or death;

the Review Council must, by notifiable instrument:

(c) give notice stating that the Review Council intends to carry out a review of the information available to the Authority about that kind of injury, disease or death; and

(d) invite persons or organisations authorised under subsection 380CE(1) to do so to make written submissions to the Review Council.

(2) The notifiable instrument under subsection (1):

(a) must specify the date by which all submissions must have been received by the Review Council; and

(b) must be made at least 28 days before the date of the first meeting of the Review Council for the purposes of the review.

(3) A failure to comply with paragraph (2)(a) does not affect the validity of the notifiable instrument.

380CE Submissions to Review Council

(1) If the Review Council is carrying out a review under section 380C, any person or organisation referred to in any of paragraphs 380CB(1)(a) to (c) may make a submission in writing to the Review Council about any information (***relevant information***) that was both available to the Authority and is relevant to the review.

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(2) A person having expertise in a field relevant to the investigation may make a submission in writing to the Review Council on any relevant information pertaining to that field.

(3) If an individual, the Commission or an organisation has made a written submission, the individual or the individual's representative, or a representative of the Commission or of the organisation may, subject to subsection (5), appear before the Review Council to make an oral submission complementing the written submission.

(4) If the Review Council is carrying out a review under section 380CA at the request of an individual, the Commission or an organisation, the individual or the individual's representative, or a representative of the Commission or of the organisation may, subject to subsection (5), appear before the Review Council to make an oral submission complementing the written submission (if any) made under paragraph 380CC(2)(b).

(5) A person or organisation may not be represented before the Review Council by a legal practitioner.

(6) In this section, a reference to a submission does not include a submission on a legal matter.

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Division 4—Payment of medical and travelling expenses

380CF Medical expenses

(1) The Commonwealth may, subject to this section, pay to a person (the ***applicant***) who asks the Review Council to conduct a review under this Part an amount to cover the medical expenses incurred by the applicant in respect of medical evidence relevant to, and obtained by the applicant for the purposes of, the review and submitted to the Review Council.

(2) The applicant must not be paid more than the amount prescribed by, or worked out in accordance with, the regulations.

(3) An amount is not payable in respect of medical expenses unless:

(a) the person who has incurred the expenses; or

(b) any person approved by that person or by the Review Council;

applies in writing to the Review Council for payment.

(4) The application for payment must:

(a) be made within 3 months after the medical evidence was submitted to the Review Council; and

(b) be accompanied by any document that the applicant considers relevant; and

(c) be made in a manner approved by the Convener of the Review Council.

380CG Travelling expenses for obtaining medical evidence

(1) If the applicant has had to travel to obtain any medical evidence submitted to the Review Council as mentioned in subsection 380CF(1), the applicant is, subject to this section, entitled to be paid in relation to that travel the travelling expenses that are prescribed.

(2) If:

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(a) the applicant is accompanied by an attendant when travelling to obtain the evidence; and

(b) the Review Council is of the view that it is reasonable for the applicant to be so accompanied by an attendant;

the attendant is, subject to this section, entitled to be paid in relation to that travel the travelling expenses that are prescribed.

(3) Travelling expenses are not payable in respect of travel outside Australia.

(4) Travelling expenses are not payable unless:

(a) the person who has incurred the expenses; or

(b) any person approved by that person or by the Review Council;

applies in writing to the Review Council for payment under subsection (5).

(5) The application for payment must:

(a) be made within:

(i) 3 months after the completion of the travel; or

(ii) if the Review Council thinks that there are exceptional circumstances that justify extending that period—such further period as the Review Council allows; and

(b) be accompanied by any document that the applicant considers relevant; and

(c) be made in a manner approved by the Convener of the Review Council.

(6) The Commonwealth is to pay the travelling expenses to which a person is entitled under this section.

380CH Advance of travelling expenses for obtaining medical evidence

(1) If the Review Council is satisfied that:

(a) it is reasonable to expect that a person may become entitled to travelling expenses under section 380CG; and

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(b) it is appropriate, in all the circumstances, that the person should be paid an advance on account of those expenses;

the Review Council may authorise the payment of that advance to the person.

(2) If:

(a) a person has received an advance on account of any travelling expenses that the person is likely to incur; and

(b) the person:

(i) does not incur those travelling expenses; or

(ii) incurs travelling expenses that are less than the amount of the advance;

the person is liable to repay to the Commonwealth:

(c) the amount of the advance; or

(d) the difference between the amount of the advance and the amount of the travelling expenses;

as the case requires.

380CI Travelling expenses for making oral submissions

(1) If:

(a) either:

(i) the Review Council is carrying out a review under section 380C and an individual, or an organisation referred to in paragraph 380CB(1)(c), has made a written submission in relation to the review; or

(ii) the Review Council is carrying out a review under section 380CA at the request of an individual or an organisation; and

(b) a person who is one of the following appears before the Review Council to make an oral submission in relation to the review:

(i) the individual or the individual's representative;

(ii) a representative of the organisation;

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the person is, subject to this section, entitled to be paid, for travel that the person undertook to appear, the travelling expenses that are prescribed.

(2) If:

(a) the person is accompanied by an attendant when travelling to appear before the Review Council; and

(b) the Review Council is of the view that it is reasonable for the person to be so accompanied by an attendant;

the attendant is, subject to this section, entitled to be paid, for that travel, the travelling expenses that are prescribed.

(3) Travelling expenses are not payable in respect of travel outside Australia.

(4) Travelling expenses are not payable unless:

(a) the person who has incurred the expenses; or

(b) any person approved by that person or by the Review Council;

applies in writing to the Review Council for payment and the Review Council approves the application.

(5) The application made under subsection (4) must:

(a) be made within 3 months after the completion of the travel; and

(b) be accompanied by any document that the person making the application considers relevant; and

(c) be made in a manner approved by the Convener of the Review Council.

(6) The Commonwealth is to pay the travelling expenses to which a person is entitled under this section.

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Part 4—Administration

Division 1—Membership etc.

380D Membership

(1) The Review Council consists of such number of Councillors as are appointed by the Minister from time to time.

(2) The Minister may appoint the number of Councillors that the Minister consider necessary for the proper exercise of the functions of the Review Council.

380DA Appointment of Councillors

(1) The Councillors are to be appointed by the Minister by written instrument.

Note: A Councillor may be reappointed (see section 33AA of the *Acts Interpretation Act 1901*).

(2) The Minister must appoint one of the Councillors to be the Convener.

380DB Qualification for appointment

(1) The Minister must not appoint a person to be a Councillor unless the person is a medical practitioner, or a medical scientist, with at least 10 years' experience.

(2) In making appointments, the Minister must:
(a) ensure that at least one Councillor has at least 5 years' experience in the field of epidemiology; and
(b) have regard to the branches of medical science expertise which would be necessary for deciding matters referred to the Review Council for review.

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380DC Basis and period of appointment

(1) A Councillor is to be appointed on a part-time basis.

(2) A Councillor holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

380DD Acting appointments

The Minister may, by written instrument, appoint a Councillor to act as the Convener of the Review Council:

(a) during a vacancy in the office of the Convener (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Convener:

(i) is absent from duty; or

(ii) is, for any reason, unable to perform the duties of the office.

380DE Remuneration

(1) A Councillor is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Councillor is to be paid the remuneration that is prescribed under subsection (4).

(2) A Councillor is to be paid the allowances that are prescribed under subsection (4).

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

(4) The Minister may, by legislative instrument, prescribe:

(a) remuneration for the purposes of subsection (1); and

(b) allowances for the purposes of subsection (2).

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380DF Other terms and conditions

A Councillor holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

380DG Resignation

(1) A Councillor may resign the Councillor's appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

380DH Termination of appointment

The Minister may terminate the appointment of a Councillor:

(a) for misbehaviour; or

(b) if the Councillor is unable to perform the duties of the Councillor's office because of physical or mental incapacity; or

(c) if the Councillor:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with the Councillor's creditors; or

(iv) makes an assignment of the Councillor's remuneration for the benefit of the Councillor's creditors; or

(d) the Councillor fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

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Division 2—Procedures of the Review Council

380DI Constitution of Review Council for reviews

The Review Council is, for the purposes of a review under Part 3, to be constituted by at least 3, but not more than 5, Councillors selected by the Convener of the Review Council.

380DJ Convening meetings

The Convener of the Review Council or the presiding Councillor may convene such meetings of the Review Council as are necessary to carry out a review under Part 3.

380DK Presiding at meetings

(1) If the Review Council as constituted for the purposes of a review under Part 3 includes the Convener of the Review Council, the Convener must preside at all meetings of the Review Council as so constituted at which the Convener is present.

(2) If the Review Council as constituted for the purposes of a review under Part 3 does not include the Convener, the Convener must appoint a Councillor (the ***presiding Councillor***) selected for the purposes of the review to preside at all meetings of the Review Council as so constituted at which the presiding Councillor is present.

380DL Voting at meetings

(1) A question arising at a meeting of the Review Council is to be determined by a majority of the votes of the Councillors present and voting.

(2) The person presiding at a meeting of the Review Council has a deliberative vote but, if the votes are equal, does not have a casting vote.

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380DM Conduct of meetings

The Review Council may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which Councillors may participate in meetings.

380DN Minutes

The Review Council must keep minutes of its meetings.

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Part 5—Other matters

380E Staff

(1) Any staff required to assist the Review Council are to be persons engaged under the *Public Service Act 1999* and made available for the purpose by the Secretary.

(2) When performing services for the Review Council, the staff are subject to the directions of the Review Council.

380EA Delegation by Convener of the Review Council

(1) The Convener of the Review Council, or a presiding Councillor, may, in writing, delegate their power under section 380DJ to:
  (a) a Councillor; or
  (b) a member of the staff assisting the Review Council.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

(2) In performing a delegated power, the delegate must comply with any written directions of the Convener or the presiding Councillor (as the case requires).

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Chapter 10—Liabilities arising apart from this Act etc.

Part 1—Preliminary

386 Simplified outline of this Chapter

This Chapter deals with the situation where a person who is entitled to compensation under this Act or the DRCA, or a pension under Part II or IV of the VEA, in respect of an injury, disease, death or loss (the ***compensable loss***) has, or may have, a right to recover damages apart from this Act, the DRCA or the VEA for the compensable loss.

Part 2 prohibits actions against the Commonwealth for the compensable loss. However, it allows the person a choice to take action against the Commonwealth to recover limited damages for non-economic loss.

Part 3 deals with payment or recovery of compensation under this Act if damages are recovered from a third party. It also allows the Commission to make or take over claims in certain cases.

387 Interpretation

(1) In this Chapter:

potentially liable member, in relation to an action or other proceeding, means a person who was, when the cause of action arose, acting in the capacity of a member.

(2) Unless the contrary intention appears, a reference in this Chapter to a person is, if the person has died, a reference to his or her legal personal representative.

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Part 2—Liability of the Commonwealth to other actions

388 Action for damages not to lie against Commonwealth etc. in certain cases

(1) Subject to section 389, an action or other proceeding for damages does not lie against the Commonwealth, or a potentially liable member, in respect of:

(a) a service injury sustained, or a service disease contracted, by another member or a former member; or

(b) the loss of, or damage to, a medical aid used by another member.

Note: However, a person may choose to institute an action for damages for non-economic loss against the Commonwealth or the potentially liable member under section 389.

(2) Subsection (1) applies whether that injury, disease, loss or damage occurred before or after this section commences. However, subsection (1) does not apply if an action or proceeding in respect of the injury, disease, loss or damage is instituted before this section commences.

(3) Subsection (1) does not prevent a dependant of a deceased member from bringing an action in respect of a service death of the deceased member (whether or not the deceased member had chosen to institute an action under section 389 before his or her death).

(4) However, if such a dependant recovers damages (including damages payable as a result of the settlement of a claim) from the Commonwealth or a potentially liable member in respect of the service death, subsections (5) and (6) have effect.

(5) If the dependant has received compensation under this Act or the DRCA, or a pension under Part II or IV of the VEA, in respect of

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the service death before recovery of the damages, the dependant is liable to pay to the Commonwealth the lesser of:

(a) an amount equal to the total of the following:

(i) all amounts of compensation paid to the person under this Act in respect of the service death before the recovery of damages (except MRCA supplement under section 245 and compensation for dependants under section 242, 253 or 255);

(ii) all amounts of compensation paid to the person under the DRCA in respect of the service death before the recovery of damages;

(iii) all amounts of pension paid to the person under Part II or IV of the VEA in respect of the service death before the recovery of damages; and

(b) the amount of the damages.

(6) Compensation under this Act or the DRCA, or a pension under Part II or IV of the VEA, in respect of the service death is not payable to the dependant after the recovery of the damages.

389 Choice to institute action for damages against the Commonwealth etc. for non-economic loss

(1) A person may choose to institute an action or proceeding against the Commonwealth or a potentially liable member for damages for non-economic loss suffered by the person if:

(a) compensation is payable under section 68, 71 or 75 of this Act, or section 24, 25 or 27 of the DRCA, in respect of a service injury or disease of the person but the compensation has not yet been paid; and

(b) the Commonwealth or the potentially liable member would, apart from subsection 388(1), be liable for damages for that loss.

(2) A choice must be in writing and must be given to the Commission.

(3) A choice is irrevocable.

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(4) If the person chooses to institute the action or proceeding:
  (a) subsection 388(1) does not apply to the action or proceeding; and
  (b) compensation under section 68, 71 or 75 of this Act, or section 24, 25 or 27 of the DRCA, in respect of the injury or disease is not payable after the date of the choice.

(5) In any action or proceeding instituted as a result of the person's choice, the court must not award the person damages of more than $177,000 for non-economic loss suffered by the person.

(6) The person's choice to institute an action or proceeding against the Commonwealth or the potentially liable member does not prevent the person from doing any other thing that constitutes an action for non-economic loss before, or instead of, formally instituting such an action or proceeding.

390 Notice of common law claims against the Commonwealth etc.

(1) This section applies if:
  (a) any of the following apply:
    (i) compensation is payable under this Act in respect of a service injury, disease or death of a person;
    (ii) compensation is, or has been, payable under the DRCA in respect of an injury, disease or death of a person;
    (iii) a pension is, or has been, payable under Part II or IV of the VEA in respect of an injury, disease or death of a person; and
  (b) the person or a dependant of the person makes a claim for damages in respect of the injury, disease or death against the Commonwealth or a potentially liable member.

(2) The person or dependant must notify the Commission in writing of the claim as soon as practicable, but not later than 7 days after the day on which he or she makes the claim.

(3) A person commits an offence if the person contravenes subsection (2).

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Penalty: 5 penalty units.

(4) Subsection (3) is an offence of strict liability.

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

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Part 3—Liability of third parties

Division 1—Notice of common law claims against third parties

391 Notice of common law claims against third parties

(1) This section applies if:

(a) any of the following apply:

(i) compensation is payable under this Act in respect of a service injury, disease or death of a person (the ***cause of action***);

(ii) compensation is payable under this Act in respect of the loss of, or damage to, a medical aid used by a person (the ***cause of action***);

(iii) compensation is, or has been, payable under the DRCA in respect of an injury, disease or death of a person (the ***cause of action***);

(iv) compensation is, or has been, payable under the DRCA in respect of the loss of, or damage to, property used by a person (the ***cause of action***);

(v) a pension is, or has been, payable under Part II or IV of the VEA in respect of an injury, disease or death of a person (the ***cause of action***); and

(b) the person or a dependant of the person makes a claim for damages in respect of the cause of action against a person other than the Commonwealth or a potentially liable member.

(2) The person or dependant must notify the Commission in writing of the claim as soon as practicable, but not later than 7 days after the day on which he or she makes the claim.

(3) A person commits an offence if the person contravenes subsection (2).

Penalty: 5 penalty units.

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(4) Subsection (3) is an offence of strict liability.

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

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Division 2—Commission may institute proceedings or take over claims against third parties

392 Application of this Division to common law claims against third parties

(1) This Division applies if:

(a) any of the following apply:

(i) compensation is payable under this Act in respect of a service injury, disease or death of a person (the ***cause of action***);

(ii) compensation is payable under this Act in respect of the loss of, or damage to, a medical aid used by a person (the ***cause of action***);

(iii) compensation is, or has been, payable under the DRCA in respect of an injury, disease or death of a person (the ***cause of action***);

(iv) compensation is, or has been, payable under the DRCA in respect of the loss of, or damage to, property used by a person (the ***cause of action***);

(v) a pension is, or has been, payable under Part II or IV of the VEA in respect of an injury, disease or death of a person (the ***cause of action***); and

(b) the cause of action occurred in circumstances that appear to create a legal liability of another person (the ***defendant***) other than the Commonwealth or a potentially liable member to pay damages in respect of the cause of action; and

(c) the person or a dependant of the person (as the case may be) (the ***plaintiff***):

(i) has not made a claim for damages against the defendant in respect of the cause of action; or

(ii) has made such a claim, but has not prosecuted it.

(2) In paragraph (1)(c), a reference to a claim having been made or not having been made by the plaintiff includes a reference to a claim

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having been made or not having been made on behalf of the plaintiff.

393 Commission may make the claim or take over the claim

The Commission may:

(a) make a claim or a fresh claim in the name of the plaintiff against the defendant for the recovery of damages in respect of the cause of action; or

(b) take over the conduct of the existing claim.

394 Commonwealth liable to pay costs of claim

If the Commission takes over the conduct of a claim, the Commonwealth becomes liable to pay the costs of or incidental to the claim that would otherwise be payable by the plaintiff. However, the Commonwealth is not liable for costs unreasonably incurred by the plaintiff.

395 Commission may conclude claim

If the Commission makes, or takes over the conduct of, the claim, the Commission may do any one or more of the following:

(a) take whatever steps are appropriate to bring the claim to a conclusion;

(b) if the claim is before a court—settle the proceedings either with or without obtaining judgment;

(c) if judgment has been obtained in favour of the plaintiff—take such steps as are necessary to enforce the judgment.

396 Plaintiff must sign documents as required

(1) If the Commission makes, or takes over the conduct of, the claim, the plaintiff must sign any document relevant to the claim (including the settlement of the claim or of any proceedings arising out of the claim) that the Commission requires the plaintiff to sign.

(2) If the plaintiff does not do so:

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(a) the Commission may apply to:
(i) if the claim is not before a court or tribunal at the time of the failure—the Federal Court of Australia; or
(ii) otherwise—the court or tribunal in which proceedings relating to the claim are being heard;
for a direction that the document be signed on the plaintiff's behalf by a person appointed by the Commission; and
(b) the court or tribunal may make the direction.

(3) If the Commission proposes to make an application under subsection (2):
(a) the Commission must notify the plaintiff that it is proposing to do so; and
(b) the plaintiff has a right of representation in the hearing of the application.

397 Plaintiff must do as the Commission requires

(1) If the Commission makes, or takes over the conduct of, the claim:
(a) the plaintiff must comply with any reasonable requirement of the Commission for the purposes of the claim; and
(b) if the plaintiff fails to comply, the Commission may determine that the person's right to compensation or a pension (but not to treatment or compensation for treatment under Chapter 6, the DRCA or the VEA) under this Act, the DRCA or the VEA in respect of the cause of action to which the claim relates is suspended until the plaintiff does so.

(2) A determination under subsection (1) must not be made in relation to a failure to comply with a requirement if, before the date fixed for complying with the requirement, the person gives to the Commission evidence of a reasonable excuse for the failure.

(3) The Commission must determine that the suspension under subsection (1) is terminated from a date determined by the Commission if, within 14 days after the date fixed for complying

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with the requirement, the person gives to the Commission evidence of a reasonable excuse for the failure.

(4) If a determination under subsection (1) is made by a delegate of the Commission, the Commission must ensure that any determination terminating the suspension under subsection (3) also made by a delegate of the Commission is made by a delegate other than a delegate who was involved in making the determination under subsection (1).

(5) If a person's right to compensation or a pension is suspended under subsection (1), the compensation or pension is not payable in respect of the period of the suspension.

398 What happens when damages are awarded

(1) Any damages payable as a result of a claim made or taken over by the Commission (including damages payable as a result of the settlement of such a claim) must be paid to the Commonwealth.

(2) The Commonwealth must deduct from the amount of those damages:

(a) an amount equal to the total of:

(i) if the claim relates to a cause of action mentioned in subparagraph 392(1)(a)(i) or (ii)—all amounts of compensation paid to the plaintiff under this Act before the payment of the damages (except MRCA supplement under section 221 or 245 and compensation for dependants under section 242, 253 or 255) in respect of the cause of action; or

(ii) if the claim relates to a cause of action mentioned in subparagraph 392(1)(a)(iii) or (iv)—all amounts of compensation paid to, or for the benefit of, the plaintiff under the DRCA before the payment of the damages in respect of the cause of action; or

(iii) if the claim relates to a cause of action mentioned in subparagraph 392(1)(a)(v)—all amounts of pension paid to the plaintiff under Part II or IV of the VEA before the

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payment of the damages in respect of the cause of action; and

(b) the amount of any costs incidental to the claim paid by the Commonwealth.

(3) If a balance remains after the deductions have been made:

(a) the Commonwealth must pay the balance to the plaintiff; and

(b) the plaintiff is not entitled to any further compensation under this Act or the DRCA, or amounts of pension under Part II or IV of the VEA, in respect of the cause of action to which the claim related until the amount of compensation or pension that would have been payable for the period after payment of the balance (apart from this paragraph) equals the amount paid under paragraph (a).

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Division 3—Effect of recovering damages on entitlements

399 When Division applies

This Division applies if:

(a) any of the following apply:

(i) compensation is payable under this Act in respect of a service injury, disease or death of a person (the ***cause of action***);

(ii) compensation is payable under this Act in respect of the loss of, or damage to, a medical aid used by a person (the ***cause of action***);

(iii) compensation is, or has been, payable under the DRCA in respect of an injury, disease or death of a person (the ***cause of action***);

(iv) compensation is, or has been, payable under the DRCA in respect of the loss of, or damage to, property used by a person (the ***cause of action***);

(v) a pension is, or has been, payable under Part II or IV of the VEA in respect of an injury, disease or death of a person (the ***cause of action***); and

(b) the person or a dependant of the person recovers damages (including damages payable as a result of the settlement of a claim) in respect of the cause of action from a person other than the Commonwealth or a potentially liable member.

400 Notifying damages

(1) The person or dependant must, not later than 28 days after the day on which the damages are recovered, notify the Commission in writing of the recovery of the damages, the date of recovery and the amount of the damages.

(2) A person commits an offence if the person contravenes subsection (1).

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Penalty: 5 penalty units.

(3) Subsection (2) is an offence of strict liability.

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

401 Repaying compensation etc. after damages recovered

(1) This section applies if:

(a) compensation under this Act or the DRCA, or a pension under the VEA, in respect of the cause of action is paid to or for the benefit of a person; and

(b) the person later recovers damages in respect of that cause of action.

(2) The person is liable to pay to the Commonwealth the lesser of:

(a) an amount equal to the total of:

(i) if the claim relates to a cause of action mentioned in subparagraph 399(a)(i) or (ii)—all amounts of compensation paid to the person under this Act before the payment of the damages (except MRCA supplement under section 221 or 245 and compensation for dependants under section 242, 253 or 255) in respect of the cause of action; or

(ii) if the claim relates to a cause of action mentioned in subparagraph 399(a)(iii) or (iv)—all amounts of compensation paid to, or for the benefit of, the person under the DRCA before the payment of the damages in respect of the cause of action; or

(iii) if the claim relates to a cause of action mentioned in subparagraph 399(a)(v)—all amounts of pension paid to the person under Part II or IV of the VEA before the payment of the damages in respect of the cause of action; and

(b) the amount of the damages.

(3) If the Commission is satisfied that a part of the damages does not relate to an injury, disease or death, or a loss of, or damage to, a medical aid or property, in respect of which:

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(a) compensation is payable under this Act; or
(b) compensation is payable under the DRCA; or
(c) a pension is payable under Part II or IV of the VEA;

this section only applies to so much of the damages as relates to an injury, disease, death, loss or damage in respect of which that compensation or pension (as the case may be) is payable.

402 No compensation etc. after damages recovered

(1) This section applies if a person recovers damages in respect of the cause of action (whether or not compensation in respect of the cause of action has been paid under this Act, or the DRCA, to or for the benefit of the person and whether or not a pension in respect of the cause of action has been paid under Part II or IV the VEA to or for the benefit of the person).

(2) None of the following is payable to the person in respect of the cause of action after the day on which the damages were recovered:
(a) compensation under this Act (except MRCA supplement under section 221 or 245 and compensation for dependants under section 242, 253 or 255);
(b) compensation under the DRCA;
(c) a pension under Part II or IV of the VEA.

(3) However, subsection (2) does not apply if the damages were recovered as a result of:
(a) a claim, or a fresh claim, made by the Commission under Division 2; or
(b) the Commission's taking over, under Division 2, the conduct of a claim.

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Division 4—Payment of damages by persons to the Commonwealth

403 Payment of damages by persons to the Commonwealth

(1) This section applies if a person other than the Commonwealth or a potentially liable member (the ***defendant***):

(a) appears to the Commission to be liable to pay damages:

(i) to a person (the ***plaintiff***) in respect of a service injury or disease of the plaintiff; or

(ii) to a person (the ***plaintiff***) in respect of the loss of, or damage to, a medical aid of the plaintiff; or

(iii) to a dependant (the ***plaintiff***) of a person in respect of a service death of the person;

in respect of which compensation has been paid under this Act; or

(aa) appears to the Commission to be liable to pay damages:

(i) to a person (the ***plaintiff***) in respect of an injury (within the meaning of the DRCA) of the plaintiff; or

(ii) to a person (the ***plaintiff***) in respect of the loss of, or damage to, property used by the plaintiff; or

(iii) to a dependant (within the meaning of the DRCA) (the ***plaintiff***) of a person in respect of the death of the person that resulted from an injury (within the meaning of the DRCA);

in respect of which compensation has been paid under the DRCA; or

(ab) appears to the Commission to be liable to pay damages:

(i) to a person (the ***plaintiff***) in respect of an injury or disease of the plaintiff; or

(ii) to a dependant (within the meaning of the VEA) (the ***plaintiff***) of a person in respect of the death of the person;

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in respect of which a pension has been paid under Part II or IV of the VEA; or

(b) has agreed to pay damages of that kind to the plaintiff; or

(c) has had damages of that kind awarded against him or her in proceedings arising out of a claim made by or on behalf of the plaintiff.

(2) The Commission may give the defendant a written notice requiring him or her to pay to the Commonwealth the damages (if any) that he or she agrees to pay or that are awarded against him or her.

(3) If the defendant is given a notice, the defendant must pay the Commonwealth the lesser of:

(a) the amount of the damages; and

(b) whichever of the following applies:

(i) the total amount of compensation paid to the plaintiff under this Act in respect of the injury, disease, death, loss or damage (except MRCA supplement under section 221 or 245 and compensation for dependants under section 242, 253 or 255);

(ii) the total amount of compensation paid to the plaintiff under the DRCA in respect of the injury, loss or damage;

(iii) the total amount of pension paid to the plaintiff under Part II or IV of the VEA in respect of the injury, disease or death.

(4) If the defendant is given a notice after paying to or for the benefit of the plaintiff all of the damages to which the notice relates, the notice has no effect.

(5) If the defendant is given a notice after paying to or for the benefit of the plaintiff part of the damages to which the notice relates, the reference in subsection (3) to the amount of the damages has effect as a reference to so much of that amount as has not been paid.

(6) If the defendant fails to pay an amount to the Commonwealth in accordance with the notice, the Commission may recover that

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amount from the defendant in a court of competent jurisdiction as a debt due to the Commonwealth.

(7) The payment of an amount to the Commonwealth by the defendant in accordance with the notice discharges, to the extent of the amount paid:

(a) the liability of the defendant to the plaintiff; and

(b) the liability (if any) of the plaintiff to the Commonwealth under Division 3.

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Chapter 11—Miscellaneous

Part 1—Indexation

404 Indexation of amounts

(1) This section applies to dollar amounts mentioned in the following provisions:

(a) subsection 74(1);
(b) subsection 80(2);
(c) subsection 82(3);
(d) paragraph 138(1)(a);
(e) subsection 206(3);
(f) paragraph 216(1)(b);
(g) paragraph 219(1)(b);
(h) subsection 234(2);
(i) subsection 240(3);
(j) section 252;
(k) section 254;
(l) paragraphs 263(1)(a) and (b);
(m) paragraph 267(3)(a).

(2) The dollar amount mentioned in the provision, for an indexation year in which the indexation factor is greater than 1, is replaced by the amount worked out using the formula:

$$\text{Dollar amount for the provision for the previous financial year} \times \text{Indexation factor for the indexation year}$$

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(3) The ***indexation factor*** for an indexation year is the number worked out using the following formula:

$$\frac{\text{December index number for the previous financial year}}{\text{Highest December index number for a year before the previous financial year}}$$

(4) The indexation factor is to be calculated to 3 decimal places, but increased by .001 if the fourth decimal place is more than 4.

(5) Calculations under subsection (3):

(a) are to be made using only the December index numbers published in terms of the most recently published index reference period for the Consumer Price Index; and

(b) are to be made disregarding December index numbers that are published in substitution for previously published December index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

(5A) For the purposes of replacing the dollar amount mentioned in subsection 74(1) for an indexation year starting on or after 1 July 2013, the indexation factor is reduced by the brought-forward CPI indexation amount for the year, but not below 1.

(5B) For the purposes of the denominator in the formula in subsection (3), the year before the previous financial year must be no earlier than 2024.

(6) In this section:

brought-forward CPI indexation amount for an indexation year starting on or after 1 July 2013 means 0.007 less any reduction made under subsection (5A) for an earlier indexation year.

December index number means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities,

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published by the Australian Statistician in respect of the 3 months ending on 31 December.

404A Indexation of Victoria Cross allowance

(1) The dollar amount mentioned in section 230B (the ***allowance amount***), for an allowance indexation year in which the indexation factor is greater than 1, is replaced by the amount worked out using the following formula:

$$\text{The allowance amount for the previous allowance indexation year} \times \text{Indexation factor for the allowance indexation year}$$

(2) The amount worked out under subsection (1) is to be rounded up to the nearest multiple of one dollar.

(3) The ***indexation factor*** for an allowance indexation year is the number worked out using the following formula:

$$\frac{\text{Index number for the reference quarter}}{\text{Index number for the base quarter}}$$

(4) The indexation factor is to be worked out to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

(5) Amounts are to be worked out under this section:
   (a) using only the index numbers published in terms of the most recently published index reference period for the Consumer Price Index; and
   (b) disregarding index numbers published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

(6) In this section:

allowance indexation year means the following:
   (a) the period of 12 months starting on 20 September 2024;

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(b) each subsequent period of 12 months starting on 20 September.

base quarter means the June quarter that has the highest index number of the June quarters before the reference quarter (but not earlier than the June quarter 2023).

index number, for a quarter, means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter.

June quarter means a period of 3 months starting on 1 April.

reference quarter means the June quarter immediately before the allowance indexation year.

404B Indexation of prisoner of war recognition supplement

(1) The dollar amount mentioned in section 268AN (the ***supplement amount***), for a supplement indexation year in which the indexation factor is greater than 1, is replaced by the amount worked out using the following formula:

$$\text{The supplement amount for the previous supplement indexation year} \times \text{Indexation factor for the supplement indexation year}$$

(2) The amount worked out under subsection (1) is to be rounded to the nearest multiple of 10 cents (rounding 5 cents or more upwards).

(3) The indexation factor for a supplement indexation year is the number worked out using the following formula:

$$\frac{\text{Index number for the reference quarter}}{\text{Index number for the base quarter}}$$

(4) The indexation factor is to be worked out to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

(5) Amounts are to be worked out under this section:

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(a) using only the index numbers published in terms of the most recently published index reference period for the Consumer Price Index; and

(b) disregarding index numbers published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

(6) In this section:

base quarter means the June quarter that has the highest index number of the June quarters before the reference quarter (but not earlier than the June quarter 2023).

index number, for a quarter, means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter.

June quarter means a period of 3 months starting on 1 April.

reference quarter means the June quarter immediately before the supplement indexation year.

supplement indexation year means the following:

(a) the period of 12 months starting on 20 September 2024;

(b) each subsequent period of 12 months starting on 20 September.

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Part 2—Obtaining and giving information etc.

405 Power of Commission to obtain information from claimant

(1) This section applies to a person who has made a claim under section 319 for:
  (a) acceptance of liability for a service injury, disease or death or for the loss of or damage to a medical aid; or
  (b) compensation under this Act.

(2) The Commission may give the person a written notice:
  (a) requiring the person to notify the Commission (or a specified staff member assisting the Commission) if:
    (i) a specified event or change of circumstance occurs; or
    (ii) the person becomes aware that such an event or change is likely to occur; or
  (b) requiring that person to give the Commission (or a specified staff member assisting the Commission) a statement relating to a specified matter.

(3) The event, change of circumstances or matter:
  (a) must be an event, change or matter that might affect or have affected:
    (i) the acceptance of liability for the service injury, disease or death or for the loss of or damage to the medical aid; or
    (ii) the payment or provision of compensation; and
  (b) must be specified in either:
    (i) the notice; or
    (ii) any other document mentioned in the notice that is also given to the person with the notice.

(4) The notice or other document must specify the period within which the person must comply with the notice. The period must be:

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(a) if paragraph (2)(a) applies—at least 14 days after the occurrence of the event or change or after the person becomes aware of the likelihood of the event or change; or

(b) if paragraph (2)(b) applies—at least 14 days after the notice is given.

(5) The notice or other document must:

(a) if paragraph (2)(a) applies—specify the manner in which the person must comply with the notice; or

(b) if paragraph (2)(b) applies—specify the form of the statement.

(6) This section does not require a person to give information to the extent that, in doing so, the person would contravene a law of the Commonwealth (not being a law of a Territory).

Note: A law of a State or Territory cannot prevent a person from giving information, producing documents or giving evidence for the purposes of this Act (see section 409).

(7) A person commits an offence if the person fails to comply with a notice under this section.

Penalty: 10 penalty units.

(8) An offence under subsection (7) is an offence of strict liability.

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

(9) Subsection (7) does not apply to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

406 Commission may obtain information etc.

(1) The Commission may give a written notice to any person requiring the person, for the purposes of this Act, the DRCA or the VEA:

(a) to provide the Commission (or a specified staff member assisting the Commission) such information as the Commission requires; or

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(b) to produce to the Commission (or a specified staff member assisting the Commission) any documents in the custody or under the control of the person; or

(c) to appear before a specified staff member assisting the Commission to answer questions.

(2) To avoid doubt, the person given the notice may be a person employed:

(a) in or in connection with a Department of the Commonwealth, a State or Territory; or

(b) by any authority of the Commonwealth, a State or Territory.

(3) The notice must specify:

(a) if paragraph (1)(a) or (b) applies:

(i) the period within which the person must comply with the notice; and

(ii) the manner in which the person must comply with the notice; or

(b) if paragraph (1)(c) applies:

(i) the time at which the person must appear before the staff member; and

(ii) the place at which the person must appear before the staff member.

(4) The specified period or the specified time mentioned in subsection (3) must be at least 14 days after the notice is given.

(5) The Commission may require the information or answers provided under paragraph (1)(c) to be verified by, or given on, oath or affirmation and either orally or in writing.

(6) A staff member to whom information or answers are verified or given may administer the oath or affirmation.

(7) This section does not require a person to give information, produce a document or give evidence to the extent that, in doing so, the person would contravene a law of the Commonwealth (not being a law of a Territory).

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Note: A law of a State or Territory cannot prevent a person from giving information, producing documents or giving evidence for the purposes of this Act (see section 409).

(8) This section binds the Crown in each of its capacities, but does not make the Crown liable to be prosecuted for an offence.

(9) A person commits an offence if the person fails to comply with a notice under this section.

Penalty: 10 penalty units.

(10) An offence under subsection (9) is an offence of strict liability.

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

(11) Subsection (9) does not apply to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (11) (see subsection 13.3(3) of the *Criminal Code*).

407 Self-incrimination

(1) An individual is not excused from giving information or evidence, or producing a document or a copy of a document, under section 406 on the ground that the information or evidence, or the production of the document or copy, might tend to incriminate the individual or expose the individual to a penalty.

(2) However:

(a) giving the information or evidence, or producing the document or copy; or

(b) any information, document or thing obtained as a direct or indirect consequence of giving the information or evidence, or producing the document or copy;

is not admissible in evidence against the individual in any proceedings, other than proceedings for an offence under section 137.1 or 137.2 of the *Criminal Code* that relates to this Act.

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407A Defence Department and Defence Force may disclose information to Commission

(1) Either of the following entities:
  (a) the Defence Department;
  (b) the Australian Defence Force;
may disclose information obtained or generated by the entity to the Commission if the disclosure is for the purposes of assisting the Commission to perform its functions or duties or exercise its powers.

(2) To avoid doubt, if information is disclosed in accordance with this section, the disclosure is taken, for the purposes of the Australian Privacy Principles, to be authorised by this Act.

(3) This section applies despite any other law of the Commonwealth, any rule of common law or any equitable obligation of confidence.

407B Use of information by Commission

The Commission may use or disclose information obtained under section 407A if the use or disclosure is for the purposes of the Commission performing its functions or duties, or exercising its powers.

408 Offence for selling etc. goods provided under this Act without consent

(1) A person commits an offence if:
  (a) the person is provided with goods under this Act for any purpose; and
  (b) the person sells the goods or otherwise disposes of, pledges, mortgages, or deposits by way of security, the goods; and
  (c) the person does so without the consent of the Commission.

Penalty: 10 penalty units.

(2) An offence under subsection (1) is an offence of strict liability.

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

408A Manner of giving notice or other document

(1) If a provision of this Act requires or permits a notice or other document to be given to a person by:

(a) the Commission; or

(b) the Board; or

(c) the Chief of the Defence Force;

then the notice or other document must be given:

(d) in accordance with section 28A of the *Acts Interpretation Act 1901*; or

(e) in a manner approved in writing by:

(i) in relation to paragraph (a)—the Commission; or

(ii) in relation to paragraph (b)—the Principal Member of the Board; or

(iii) in relation to paragraph (c)—the Chief of the Defence Force.

(2) This section does not limit the *Electronic Transactions Act 1999*.

409 Giving information

(1) Nothing in a law of a State or of a Territory may operate to prevent a person from giving information, producing documents or giving evidence for the purposes of this Act.

(2) The Commission (or a staff member assisting the Commission) may provide any information obtained in the performance of his or her duties under this Act, the DRCA or the VEA to a person or agency specified in this table for the purpose specified in the table:

Giving information

Item	Person or agency	Purpose
1	The Defence Department	A purpose of the Defence Department

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Giving information		
Item	**Person or agency**	**Purpose**
2	The Australian Defence Force	A purpose of the Australian Defence Force
2A	The Commonwealth Superannuation Corporation	A purpose relating to the performance of a function, or the exercise of a power, by that Corporation under: (a) an Act administered by CSC; or (b) an instrument under an Act administered by CSC
2B	The Secretary of the Health Department	A purpose of the Health Department
2C	The Chief Executive Medicare (within the meaning of the *Human Services (Medicare) Act 1973*)	A purpose relating to the exercise of the Chief Executive Medicare's powers or the performance of the Chief Executive Medicare's functions
2D	A receiving Commonwealth body	A purpose relating to the performance of a function, or the exercise of a power, by that body
3	A person or agency specified in the regulations	A purpose specified in the regulations in relation to that person or agency

(2A) If:

(a) any of the following apply:

(i) a person is entitled to treatment under Chapter 6 of this Act;

(ii) a person is entitled to compensation for medical treatment under the DRCA;

(iii) a person is entitled to treatment under Part V of the VEA; and

(b) the treatment is provided to the person through an arrangement, including a contractual arrangement, with a body that is not a corporate Commonwealth entity or a non-corporate Commonwealth entity;

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the Commission (or a staff member assisting the Commission) may provide any information that relates to the provision of that treatment:

(c) to a receiving Commonwealth body; and

(d) for a purpose relating to the performance of a function, or the exercise of a power, by that body.

(3) The person or agency must not:

(a) use the information for a purpose other than the specified purpose; or

(b) further disclose the information for a purpose other than the specified purpose.

(4) To avoid doubt, if information is disclosed or used in accordance with this section, the disclosure or use is taken, for the purposes of the Australian Privacy Principles, to be authorised by this Act.

(5) In this section:

Act administered by CSC has the meaning given by the *Governance of Australian Government Superannuation Schemes Act 2011*.

corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

non-corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

receiving Commonwealth body means any of the following:

(a) the Aged Care Quality and Safety Commission;

(b) the National Disability Insurance Agency;

(c) the NDIS Quality and Safeguards Commission;

(e) the Department administered by the Minister administering the *Aged Care Act 2024*;

(f) the Department administered by the Minister administering the *Disability Services and Inclusion Act 2023*;

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(g) the Department administered by the Minister administering the VEA;

(h) if:

(i) another Department of State, or another authority, of the Commonwealth has regulatory, compliance or enforcement functions in relation to the provision of care, support, treatment or other related services or assistance (including care, support, treatment or other related services or assistance provided through an arrangement, including a contractual arrangement); and

(ii) the Department or authority is prescribed in the regulations;

that Department or authority.

409A Commission must give certain documents on request

(1) Any of the persons mentioned in subsection (2) may request the Commission to give the person any document held by the Commission that relates to a claim or application made under the VEA.

(2) For the purposes of subsection (1), the persons are the following:

(a) the Chief of the Defence Force;

(b) the person who made the claim or application (as the case requires).

(3) The Commission must comply with the request.

410 Judicial notice to be taken of certain matters

Judicial notice of signature

(1) All courts must take judicial notice of a signature that purports to be attached or appended to any official document if it is the signature of a person who:

(a) is or was a Commissioner; or

(b) is or was a staff member assisting the Commission.

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Judicial notice that person holds office

(2) If the signature of a person mentioned in subsection (1) purports to be attached or appended to any official document, all courts must take judicial notice of the fact that the person:
  (a) is or was a Commissioner; or
  (b) is or was a staff member assisting the Commission.

411 Evidence

(1) A statement in writing signed by a person who:
  (a) is or was a Commissioner; or
  (b) is or was a staff member assisting the Commission;

that a person is or was receiving compensation, or compensation of a particular kind, under this Act on a certain date or of a certain amount must be received in all courts as prima facie evidence that the person is or was receiving the compensation, or compensation of that kind, on the date or of the amount stated.

(2) For the purposes of this section, a document purporting to be a statement referred to in subsection (1) is, unless the contrary is established, taken to be such a statement and to have been duly given.

Statement not to be admitted unless copy given to defendant 14 days before statement to be admitted in evidence

(3) A statement must not be admitted in evidence under subsection (1) in proceedings for an offence unless the person charged with the offence or a solicitor who has appeared for the person in those proceedings has, at least 14 days before the statement is sought to be so admitted, been given a copy of the statement together with reasonable evidence of the intention to produce the statement as evidence in the proceedings.

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Person giving statement may be called to give evidence

(4) Subject to subsection (5), if, under subsection (1), a statement is admitted in evidence in proceedings for an offence, the person charged with the offence may require the person giving the statement to be called as a witness for the prosecution and cross-examined as if he or she had given evidence of the matters stated in the statement.

(5) Subsection (4) does not entitle the person charged to require the person giving a statement to be called as a witness for the prosecution unless the Court, by order, allows the person charged to require the person giving the statement to be so called.

Evidence in support of rebuttal of matters in statement to be considered on its merits

(6) Any evidence given in support, or in rebuttal, of a matter stated in a statement given under subsection (1) must be considered on its merits and the credibility and probative value of such evidence must be neither increased nor diminished by reason of this section.

411A Copyright in submissions

(1) The Authority or the Review Council is not the owner of any copyright subsisting in material (***submitted material***) contained in a submission made to the Authority or the Review Council (as the case may be) for the purposes of an investigation under Part 3 of Chapter 9A.

(2) Despite the *Copyright Act 1968*, the Authority or the Review Council does not infringe any copyright subsisting in submitted material if, in performing its functions or exercising its powers, the Authority or the Review Council (as the case may be) does an act comprised in the copyright without the licence of the owner of the copyright.

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411B Access to information

(1) Subject to subsection (2), any person or organisation referred to in any of paragraphs 370CH(1)(a) to (d) or 380CB(1)(a) to (c) is entitled, on request made in writing to:

(a) in the case of a person or organisation referred to in paragraphs 370CH(1)(a) to (d)—the Authority; or

(b) in the case of a person or organisation referred to in paragraphs 380CB(1)(a) to (c)—the Review Council;

to have reasonable access to any document containing information considered by the Authority or the Review Council (as the case may be) for the purposes of an investigation.

(2) The Authority or the Review Council (as the case may be) may not disclose any personal information about a particular person if the information is likely to reveal the identity of that person.

412 Providing tax file numbers

Application of section

(1) This section applies to a person who is being paid compensation for incapacity for service or work under Part 3 or 4 of Chapter 4.

Commission may request person's TFN

(2) If the person is in Australia, the Commission may request (but not compel) the person:

(a) if the person has a tax file number—to give the Commission a written statement of the person's tax file number; or

(b) if the person does not have a tax file number:

(i) to apply to the Commissioner of Taxation for a tax file number; and

(ii) to give the Commission a written statement of the person's tax file number after the Commissioner of Taxation has issued it.

Note: Section 413 sets out how to satisfy the request.

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Certain compensation not to be paid if request not complied with

(3) The person must not be paid any compensation under Part 3 or 4 of Chapter 4 that the person is otherwise entitled to receive if the request under subsection (2) is not satisfied.

Note: Section 414 allows back pay if the request is satisfied within 3 months.

413 How to satisfy the request under section 412

(1) This section sets out how to satisfy a request under section 412 in respect of a person's tax file number.

Compliance by giving a TFN declaration

(2) If the person is entitled to compensation for incapacity for service or work and the compensation is assessable income for the purposes of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*, the request is complied with if the person gives the Commission a TFN (within the meaning of Part VA of the *Income Tax Assessment Act 1936*).

Compliance if a person has a TFN but does not know it

(3) If the person has a tax file number but the person does not know what it is, the request is complied with if:

(a) the person gives the Commission a declaration:

(i) that the person has a tax file number but does not know what it is; and

(ii) that the person has asked the Commissioner of Taxation to inform him or her of the number; and

(b) the person gives the Commission a document authorising the Commissioner of Taxation to tell the Commission:

(i) whether the person has a tax file number; and

(ii) if so—the tax file number; and

(c) the Commissioner of Taxation has not told the Commission that the person has no tax file number.

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Compliance if a person has applied for a TFN

(4) If the person has applied for a tax file number, the request is complied with if:

(a) the person gives the Commission a declaration that he or she has applied for a tax file number; and

(b) the person gives the Commission a document authorising the Commissioner of Taxation to tell the Commission:

(i) if a tax file number is issued to the person—the tax file number; or

(ii) if the application is refused—that the application has been refused; or

(iii) if the application is withdrawn—that the application has been withdrawn; and

(c) the Commissioner of Taxation has not told the Commission:

(i) that the person has not applied for a tax file number; or

(ii) that an application by the person for a tax file number has been refused; or

(iii) that the application for a tax file number has been withdrawn.

Declaration to be in approved form

(5) A declaration under this section must be in a form approved by the Commission.

414 Compensation when request is not satisfied initially

Back pay for those who comply within 3 months

(1) If:

(a) a person's compensation for incapacity for service or work under Part 3 or 4 of Chapter 4 ceases to be paid under subsection 412(3) because the request under subsection 412(2) is not satisfied by a particular day; and

(b) the request is satisfied within the period of 3 months from that day;

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then the compensation that would have been paid to the person during that period if the request had been satisfied is to be paid to the person.

No back pay for those who do not comply within 3 months

(2) If the request is satisfied after that period of 3 months, the person's compensation is to be paid from the day on which the request is satisfied.

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Part 3—Recovering overpayments

Division 1—Recovery generally

415 Recovery of overpayments

(1) This section applies if:

(a) an amount of compensation is paid under this Act or the DRCA to a person as a result of a false or misleading statement or representation, or a failure or omission to comply with this Act or the DRCA; or

(aa) an amount is paid under an instrument made under section 268B to a person as a result of a false or misleading statement or representation, or a failure or omission to comply with this Act or the instrument; or

(b) an amount of compensation (other than an amount that the Commonwealth is entitled to recover under Division 2) that has been paid to a person under this Act or the DRCA should not have been paid; or

(ba) any amount by which an advance payment (under the scheme referred to in section 291A) in respect of compensation a person is expected to become entitled to under section 290 or 291 exceeds the amount of compensation that the person becomes entitled to under section 290 or 291; or

(c) a person is liable to pay an amount under this Act or the DRCA to the Commonwealth.

(2) However, this section does not apply in respect of a person if one or more of sections 315, 316 and 317 apply in respect of the person.

Note: Chapter 6 has its own recovery provisions (see sections 315, 316 and 317).

(3) The amount is recoverable by the Commission from the person in a court of competent jurisdiction as a debt due to the Commonwealth.

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(4) The recoverable amount may be deducted from an amount that is payable to or for the benefit of the person under this Act or the DRCA.

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Division 2—Recovery of overpayments to persons receiving a Commonwealth superannuation benefit

416 Notice to Commission of retirement of person

(1) This section applies if:
  (a) a person who is or was a member is receiving, or is entitled to receive, compensation under this Act or the DRCA; and
  (b) the person retires from his or her employment; and
  (c) the person was a member of a Commonwealth superannuation scheme immediately before retiring.

(2) The person must, within 14 days after the person retires from his or her employment, give a written notice to the Commission:
  (a) stating that the person has retired; and
  (b) specifying the date of the retirement; and
  (c) identifying the Commonwealth superannuation scheme of which the person was a member immediately before his or her retirement.

Penalty: 5 penalty units.

(3) An offence under subsection (2) is an offence of strict liability.

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

417 Application of section 418

(1) Section 418 applies if:
  (a) a person (the ***incapacitated person***) ceases his or her employment; and
  (b) the incapacitated person is or might be entitled to either or both a pension or a lump sum under a Commonwealth superannuation scheme; and
  (c) subsection (2) applies to the incapacitated person.

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(2) This subsection applies to the incapacitated person if:

(a) without limiting paragraph (b):

(i) the Commission made a determination in relation to the incapacitated person under section 89B or 126A; and

(ii) the determination has been revoked; and

(iii) the incapacitated person has begun to receive or has received a benefit under a Commonwealth superannuation scheme; or

(b) the Commission is of the opinion that it might pay, or might have paid, more compensation under Part 3, 4 or 5 of Chapter 4 to the incapacitated person than he or she is entitled to receive because of:

(i) Division 7 of Part 3 of Chapter 4 (compensation where a Commonwealth superannuation benefit is received); or

(ii) Subdivision D of Division 2 of Part 4 of Chapter 4 (compensation where a Commonwealth superannuation benefit is received); or

(iii) section 204 (reduction in rate of Special Rate Disability Pension).

418 Commission may give a notice to the administrator of the scheme

(1) The Commission may give a written notice to the administrator of the Commonwealth superannuation scheme (the ***administrator***):

(a) stating that the Commission might make, or might have made, an overpayment of compensation to the incapacitated person; and

(b) requiring the administrator to tell the Commission whether:

(i) the incapacitated person has received any payment in respect of his or her entitlement mentioned in paragraph 417(1)(b); and

(ii) all the incapacitated person's benefits under the scheme have been deferred; and

(c) if the incapacitated person has not received such payment and the incapacitated person's benefits have not been deferred—

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requiring the administrator to do the things mentioned in subsection (2).

(2) The notice may require the administrator:

(a) not to pay any pension or lump sum to the incapacitated person until the administrator receives a notice from the Commission under subsection 420(2); and

(b) as soon as practicable, to give the Commission details of the following amount that is payable to the incapacitated person under the Commonwealth superannuation scheme:

(i) the amount of the pension;

(ii) the amount of the lump sum worked out as at the date of the incapacitated person's cessation of employment;

(iii) the amount of the pension and the lump sum as so worked out;

(as the case requires).

419 Commission to give notice to incapacitated person

The Commission must give a written notice to the incapacitated person stating that it has given a notice to the administrator under section 418 and explaining how this Division works.

420 What happens if the incapacitated person has not received any Commonwealth superannuation benefit in respect of his or her cessation of employment

(1) This section applies if:

(a) the incapacitated person has not received any payment in respect of his or her entitlement mentioned in paragraph 417(1)(b); and

(b) the incapacitated person's benefits under the scheme have not been deferred; and

(c) the Commission has received the details mentioned in paragraph 418(2)(b).

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Note: Under paragraph 418(2)(b), the administrator is required to give the Commission details of either or both the amount of the pension or lump sum that is payable to the incapacitated person.

(2) The Commission must do the following within 2 working days after receiving the details:

(a) determine whether an overpayment of compensation to the incapacitated person has occurred;

(b) if it determines that no overpayment has occurred—give a written notice to the administrator stating that fact;

(c) otherwise—give a written notice to the administrator:

(i) stating the amount of the overpayment; and

(ii) requiring the administrator to pay that amount to the Commonwealth in accordance with section 421.

(3) The Commission must not reduce the rate or amount of compensation payable to the incapacitated person under this Act until it has given the notice mentioned in paragraph (2)(b) or (c) to the administrator.

(4) For the purposes of subparagraph (2)(c)(i), the ***amount of the overpayment*** is the difference between:

(a) the total amount of compensation paid under Part 3, 4 or 5 of Chapter 4 after the incapacitated person ceased his or her employment; and

(b) the total amount of compensation that should have been paid to the incapacitated person under that Part having regard to:

(ia) Division 7 of Part 3 of Chapter 4 (compensation where a Commonwealth superannuation benefit is received); or

(i) Subdivision D of Division 2 of Part 4 of Chapter 4 (compensation where a Commonwealth superannuation benefit is received); or

(ii) section 204 (reduction in rate of Special Rate Disability Pension).

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421 Administrator must pay the amount of overpayment to the Commonwealth

(1) If section 420 applies in respect of an incapacitated person, the administrator must pay the amount mentioned in subsection (2) to the Commonwealth out of the payments of pension or lump sum that the administrator would otherwise have made to the incapacitated person.

(2) The administrator must pay on a particular day the lesser of the following amounts:
  (a) the amount of the payment of pension or lump sum (or both) that the administrator would otherwise have made to the incapacitated person on the day;
  (b) the amount of the original overpayment less any amounts that the administrator has paid to the Commonwealth before that day to reduce the original overpayment.

(3) The payment of an amount by the administrator to the Commonwealth discharges, to the extent of that amount:
  (a) the liability of the administrator to pay that amount to the incapacitated person; and
  (b) the liability of the incapacitated person to pay that amount to the Commonwealth.

422 Compliance by the administrator

(1) The administrator must comply with a requirement made of the administrator under this Division by the Commission. However, a failure to comply with a requirement is not an offence.

(2) This section has effect despite:
  (a) sections 143 and 143A of the *Superannuation Act 1922*; and
  (b) sections 85 and 85A of the *Defence Forces Retirement Benefits Act 1948*; and
  (c) sections 129 and 130 of the *Defence Force Retirement and Death Benefits Act 1973*; and

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(d) sections 118 and 119 of the *Superannuation Act 1976*.

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Part 4—Appropriation

423 Appropriation

The Consolidated Revenue Fund is appropriated for the purposes of paying the following:

(a) compensation under this Act (other than compensation under section 212 or 258, or 300 in relation to treatment provided under subsection 280A(1));

(b) costs incurred in respect of assessments, examinations, rehabilitation and finding suitable work under Parts 1 to 4 of Chapter 3 but only to the extent that the rehabilitation authority is the Commission;

(ba) payments under the scheme referred to in section 62A;

(bb) assistance or benefits granted under an instrument made under section 268B;

(bc) assistance or benefits granted under regulations made for the purposes of section 268D;

(c) treatment and other services provided under Chapter 6 (other than under subsection 280A(1) (treatment for certain injuries covered by the DRCA);

(caa) costs the Commission has accepted financial responsibility for as mentioned in subsection 287(2A);

(cab) advance payments under the scheme referred to in section 291A;

(ca) travelling expenses payable under sections 353P, 353Q and 353S;

(cb) fees and allowances of witnesses payable under section 353T;

(d) assistance or benefits granted under section 424 (special assistance);

(da) compensation under an instrument made under section 424M (financial and legal advice).

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Note 1: The appropriation for compensation and other costs incurred under sections 212 and 258, and for most other costs incurred under this Act that are not mentioned in this section, is included in annual Appropriation Acts.

Note 2: The appropriation in relation to treatment provided under subsection 280A(1) is in subsection 160(2) of the DRCA.

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Part 5—Special assistance

424 Special assistance

The Commission may, in the circumstances and subject to the conditions (if any) prescribed in a legislative instrument made by the Commission for the purposes of this subsection, grant assistance or benefits of the kind, and the amount or value, that it considers reasonable to a person:

(a) who is a member or former member; or

(b) who is or was a dependant of a member, former member or deceased member.

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Part 5A—Clean energy payments

Division 6—Multiple entitlement exclusions

424L Multiple entitlement exclusions

(1) The Commission may by legislative instrument determine that persons in circumstances specified in the instrument are not entitled to a clean energy bonus under this Act that is specified in the instrument.

Note: For ***clean energy bonus*** see subsection 5(1).

(2) Those circumstances must relate to persons' entitlement to or receipt of one or more of the following:

(a) another clean energy bonus under this Act;

(b) a clean energy bonus under the VEA;

(c) a clean energy bonus under the *Social Security Act 1991*;

(d) a clean energy bonus under a scheme (however described), whether or not the scheme is provided for by or under an Act.

(3) An instrument under subsection (1) has effect according to its terms, despite any other provision of this Act.

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Part 5B—Financial and legal advice

424M Financial and legal advice

(1) The Commission may, by legislative instrument, make provision for and in relation to the obtaining of financial and legal advice by persons for the purposes of this Act.

(2) Without limiting subsection (1), the instrument may:
  (a) specify the circumstances in which persons must obtain financial or legal advice (which must be circumstances that relate to an entitlement to compensation or other benefits under this Act); and
  (b) require the advice to be obtained from:
    (i) in the case of financial advice—a suitably qualified financial adviser; and
    (ii) in the case of legal advice—a practising lawyer; and
  (c) provide for consequences to apply if the advice is not obtained.

(3) Without limiting paragraph (2)(a), and despite any other provision of this Act, the instrument may require financial or legal advice to be obtained in respect of the choice that a person may make under the following:
  (a) Part 2 of Chapter 4 (permanent impairment);
  (b) Part 6 of Chapter 4 (choice to receive a Special Rate Disability Pension);
  (c) Part 2 of Chapter 5 (compensation for member's death for wholly dependent partners);

but must not modify the requirement to obtain financial advice in subsection 202(3).

(4) If the instrument requires a person to obtain financial or legal advice, the instrument:

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(a) must also make provision for and in relation to the payment of compensation, by the Commonwealth, for costs incurred by the person in obtaining the advice; and

(b) may specify the maximum amount of compensation payable for such costs; and

(c) may provide for the indexation of that maximum amount.

(5) Subsection (4) applies subject to the following provisions (which deal with compensation for the cost of financial and legal advice in certain circumstances):

(a) sections 81 to 83;

(b) sections 205 to 207;

(c) Division 3 of Part 2 of Chapter 5.

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Part 6—General

425 Assignment, set-off or attachment of compensation

(1) An assignment of any compensation payable under this Act is void as against the Commonwealth.

Note: Some provisions of this Act allow a person to whom compensation is payable to direct that the compensation be paid to another person who provided services for the person (see, for example, section 220).

(2) Except as provided by this Act, an amount payable by a member or former member, or a dependant of a deceased member, to the Commonwealth must not be set off against the amount of any compensation payable under this Act to the member or former member or for the benefit of the dependant.

(3) Except as provided by the *Maintenance Orders (Commonwealth Officers) Act 1966*, the *Child Support (Registration and Collection) Act 1988* or the *Social Security Act 1991*, or by regulations under the *Family Law Act 1975*, any compensation under this Act is not subject to attachment.

426 Payments to Commissioner of Taxation

(1) This section applies if the Commonwealth is given a notice under Subdivision 260-A in Schedule 1 to the *Taxation Administration Act 1953* in respect of a person who is entitled to compensation under this Act.

Note: This means that the Commonwealth is the third party referred to in section 260-5 of that Schedule and the person who is entitled to compensation is the debtor referred to in that section.

(2) The Commonwealth must:

(a) deduct amounts from the compensation payable to or for the benefit of the person (except compensation for costs incurred by the person); and

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(b) pay the amounts deducted to the Commissioner of Taxation;

in accordance with that Subdivision.

427 Jurisdiction of courts with respect to extraterritorial offences

(1) The several courts of the States are invested with federal jurisdiction, and jurisdiction is conferred on the several courts of the external Territories, with respect to external offences.

(2) The jurisdiction invested in, or conferred on, courts by subsection (1) is invested or conferred within the limits of their several jurisdictions (other than limits based on the places at which offences are committed), whether those limits are as to subject-matter or otherwise.

(3) Jurisdiction with respect to an external offence is not conferred on a court of an external Territory unless the offence was committed in that Territory.

(4) Subject to this section, the *Judiciary Act 1903* applies in relation to offences in relation to which this section applies.

(5) In this section:

external offence means an offence against this Act committed outside Australia.

427A Commission may accept contributions

(1) The Commission may accept from a person contributions of money and other property made to it:

(a) for a purpose specified by the person, if application of the money or other property for that purpose is necessary or convenient to be done for, or in connection with, the performance of the Commission's functions or duties; or

(b) for application by the Commission, as it deems fit, for, or in connection with, the performance of the Commission's functions or duties.

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(2) Contributions accepted by the Commission in accordance with subsection (1) may be applied:

(a) if the person making the contribution specified that the person desired the contribution to be applied for a particular purpose, for the benefit of a particular class of persons or for the benefit of a particular institution maintained by the Commission—for the purpose so specified; or

(b) in any other case—by the Commission as it deems fit, for, or in connection with, the performance of the Commission's functions or duties.

(3) Subject to subsection (2), contributions accepted by the Commission in accordance with subsection (1) are to be dealt with as prescribed and, subject to the regulations (if any) prescribing the manner in which those contributions are to be dealt with, as determined by the Commission.

427B Commission may administer trusts

(1) Subject to this section, the Commission may be appointed, and may in its corporate name act, as trustee:

(a) under a will, settlement or other instrument creating a trust for the benefit of members, former members, dependants of members or former members or other persons who were dependent on members or former members; or

(b) under the will of a member or former member creating a trust for beneficiaries under that will.

(2) The Commission may decline to accept, or accept subject to such conditions as it deems fit, a trust or appointment to act as trustee.

(3) If the Commission accepts an appointment as trustee of a trust, the Commission:

(a) has the same powers, duties and liabilities; and

(b) is entitled to the same rights and immunities; and

(c) is subject to the same control by a court;

as a natural person would have, be entitled to and be subject to if appointed to be, and acting as, trustee of that trust.

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(4) If the Commission is a trustee of 2 or more trusts under this section, the Commission may, subject to subsection (5), for the purpose of investing the trust funds, pool the trust funds in respect of those trusts.

(5) The Commission must not pool trust funds under subsection (4), or invest trust funds pooled under that subsection, in a way that prevents the trust funds held in respect of each trust being identified sufficiently to enable the Commission to properly perform its functions as trustee.

(6) The Commission may:

(a) make an arrangement with another person for the other person to manage the trust funds; and

(b) for the purposes of such an arrangement, transfer the trust funds to the other person;

but the making of such an arrangement, or the transferring of the trust funds, does not relieve the Commission of any duties or liabilities as trustee.

(7) The regulations may make provision for and in relation to the investment of money vested in the Commission as trustee pending application in accordance with the trust or for the purpose of deriving income for application in accordance with the trust.

(8) In this section:

trust funds, in relation to a trust of which the Commission is the trustee, means money vested in the Commission as trustee.

428 Commission may write off a debt

(1) The Commission may decide, in writing, to write off a debt due to the Commonwealth under this Act or the DRCA.

Note: If the Commission writes off a debt, this means an administrative decision has been made that, in the circumstances, there is no point in trying to recover the debt. In law, however, the debt still exists and may later be pursued.

(2) The decision takes effect:

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(a) on the day set out in the decision (which may be before, on or after the day the decision is made); or
(b) if no day is set out in the decision—on the day the decision is made.

429 Commission may waive a debt

(1) The Commission may decide, in writing, to waive the Commonwealth's right to recover from a person the whole or a part of a debt due to the Commonwealth under this Act or the DRCA.

Note: If the Commission waives the Commonwealth's rights to recover, this is a permanent bar to recovery of the debt—the debt effectively ceases to exist.

(2) The decision takes effect:
(a) on the day set out in the decision (which may be before, on or after the day the decision is made); or
(b) if no day is set out in the decision—on the day the decision is made.

430 Payment into bank account etc.

(1) The Commission may direct that the whole or a part of a person's compensation is to be paid, at the intervals that the Commission specifies, to the credit of an account with:
(a) a bank; or
(b) if the person is physically outside Australia—a foreign corporation that takes money on deposit.

This subsection is subject to subsection (3A).

(3) The compensation:
(a) must not be paid into an account until the person has nominated an account; and
(b) must be paid in accordance with the Commission's direction.

Note: For rules about nomination of accounts, see subsections (3D) to (3F).

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(3AA) In specifying intervals in a direction under subsection (1), the Commission may take account of a person's choice, notified to the Commission, to be paid energy supplement quarterly. This does not limit the Commission's powers under that subsection.

Compensation must be paid into an account

(3A) A person's compensation must be paid to the credit of an account with a bank, or a foreign corporation that takes money on deposit, in the circumstances specified under subsection (3C).

Note: Sections 432 and 433 deal with payments to trustees.

(3C) The Commission may, by legislative instrument, specify circumstances for the purposes of subsection (3A).

Nomination of accounts

(3D) The account referred to in subsection (1) or (3A) must be one that is nominated, at any time by the person, for the purposes of this section.

(3E) However, if:

(a) there is no nomination of an account by the person in force for the purposes of this section; and

(b) there is a nomination of an account (the existing account) by the person in force for the purposes of subsection 122A(1) of the VEA;

the existing account is taken to be an account nominated by the person for the purposes of this section.

(3F) Subsection (3E) ceases to apply in relation to the person if, in accordance with subsection (3D), the person nominates an account for the purposes of this section.

Definitions

(4) In this section:

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account means an account, maintained by a person, to which money received on deposit by a bank, or a foreign corporation, from that person is credited.

bank includes a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

430A Use of account details

Use

(1) The Commission, a Commissioner or a staff member assisting the Commission may use the details of an account referred to in paragraph 430(3E)(b) for the purposes of section 430.

Interaction with Privacy Act 1988

(4) For the purposes of the *Privacy Act 1988*, the use of the details of an account in accordance with subsection (1) is taken to be a use that is authorised by this Act.

431 Payments at person's request

(1) A person who is entitled to compensation that is payable periodically may request, in writing, the Commission to deduct a specified amount from the compensation:
  (a) to pay the Commissioner of Taxation; or
  (b) for the purpose of making payments included in a class of payments approved by the Minister.

(2) If such a request is made, the Commission may deduct the amount and, if it does so, is to pay the amount deducted in accordance with the request.

(3) The Minister may, by writing, approve classes of payments for the purposes of paragraph (1)(b).

Note: The approval may be varied or revoked (see subsection 33(3) of the *Acts Interpretation Act 1901*).

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(4) An approval, and any variation or revocation of an approval, is a legislative instrument.

432 Trustees for persons entitled to compensation etc.

(1) This section applies if:
  (a) a person who is entitled to be paid any of the following is under a legal disability:
    (i) compensation under Chapter 3, 4, 5 or 6;
    (ii) compensation under the DRCA;
    (iii) a pension or allowance under the VEA;
    (iv) a veteran payment (within the meaning of the VEA); or
  (b) if such a person is under 18—there is no person who has the primary responsibility for the daily care of that person.

(2) The Commission may, in writing:
  (a) appoint the Commonwealth, or any other person, to be the trustee of the payments; or
  (b) itself assume the office of trustee of the payments.

Note: Section 433 sets out the powers of the trustee.

(3) The Commission may, in writing, revoke:
  (a) the appointment of a trustee; or
  (b) the assumption by the Commission of the office of trustee.

(4) If the Commission revokes the appointment of a trustee:
  (a) the Commission may, in writing:
    (i) appoint a new trustee; or
    (ii) itself assume the office of trustee; and
  (b) the trust funds vest in:
    (i) if subparagraph (a)(i) applies—the new trustee; or
    (ii) if subparagraph (a)(ii) applies—the Commission.

(5) If the Commission revokes the assumption by the Commission of the office of trustee:
  (a) the Commission may, in writing, appoint a new trustee; and

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(b) the trust funds vest in the new trustee.

(6) If the Commission:

(a) revokes the appointment of a trustee and does not exercise its powers under paragraph (4)(a); or

(b) revokes the assumption by the Commission of the office of trustee and does not exercise its powers under paragraph (5)(a);

the trust is terminated.

433 Powers of the trustee generally

(1) If a trustee is appointed, or the Commission assumes the office of trustee, under section 432 in respect of payments of compensation and other benefits mentioned in paragraph 432(1)(a), the payments are payable to the trustee.

(2) A trustee may invest those payments and interest on those payments in accordance with section 434 or 435.

(3) The trust funds may be dealt with in the following ways:

(a) the funds may be applied for the benefit of the person who is entitled to the compensation or other benefit, a member of that person's family, or a dependant of that person, as the trustee sees fit;

(b) if the trust is terminated during the life of that person—the trust funds must be transferred to that person;

(c) if that person dies before the trust is terminated—the trust funds must be paid or transferred to:

(i) the legal personal representative of the deceased person as part of the estate of the deceased person; or

(ii) if there is no legal personal representative and the Commission is satisfied that no application will be made for probate of the will or letters of administration of the estate of the deceased person—the person who the Commission determines is best entitled to them.

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(4) For the purposes of paragraph (3)(a), the members of a person's family are taken to include the following (without limitation):

(a) a partner of the person;

(b) a stepchild or an adopted child of the person, or someone of whom the person is a stepchild or an adopted child;

(c) someone who is a child of the person, or someone of whom the person is a child, because of the definition of ***child*** in this Act;

(d) anyone else who would be a relative of the person if someone mentioned in paragraph (a), (b) or (c) is taken to be a member of the person's family.

434 Powers of Commonwealth etc. trustee to invest trust funds

(1) This section applies if:

(a) a trustee appointed under section 432 is the Commonwealth or an APS employee; or

(b) the Commission assumes the office of trustee under section 432.

(2) A trustee may invest any trust funds not applied for the benefit of a person in any manner prescribed by the regulations.

(3) If a trustee is a trustee in respect of 2 or more persons who are entitled to compensation or other benefits mentioned in paragraph 432(1)(a), then the trustee may pool those persons' trust funds for the purposes of investing the funds.

(4) However, a trustee must not pool trust funds or invest pooled trust funds in a way that prevents the trust funds from being identified sufficiently to allow paragraph 433(3)(a) to be complied with.

(5) A trustee in respect of payments of compensation or other benefits mentioned in paragraph 432(1)(a) may:

(a) arrange for another person to manage the trust funds; and

(b) transfer the funds to the other person for the purposes of the arrangement.

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However, making an arrangement or transferring funds does not relieve the trustee of any duties or liabilities as trustee.

(6) The Commonwealth:

(a) may charge fees (whether by way of commission or otherwise) for the services of a trustee in respect of payments of compensation or other benefits in accordance with the regulations; and

(b) is entitled to reasonable expenses incurred by the trustee in rendering the services.

The fees and expenses may be paid from the trust funds.

435 Powers of investment for non-Commonwealth trustee

(1) This section applies if a trustee appointed under section 432 in respect of payments of compensation or other benefits mentioned in paragraph 432(1)(a) is not the Commonwealth or an APS employee.

(2) The trustee may invest any trust funds not applied under paragraph 433(3)(a) in any investments authorised for the investment of trust funds by the law of the State or Territory where the person who is entitled to the compensation or other benefit resides.

436 Provisions applicable on death of person

(1) A payment of an amount of compensation in respect of a deceased person forms part of the estate of the person.

(2) However, if the Commission determines that no application will be made for probate of the will or letters of administration of the estate of the deceased person, the Commonwealth is not liable to pay the compensation.

437 Amounts of compensation

An amount of compensation payable under this Act in respect of a service injury, disease or death is in addition to any other amount

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of compensation paid or payable under this Act in respect of that injury, disease or death.

437A Delegation by Minister

(1) The Minister may, by writing, delegate any of the Minister's functions or powers under this Act (other than section 359CA or 359CC), under the regulations or under any other legislative instrument made under this Act to:

(a) a Commissioner; or

(b) an SES employee, or acting SES employee, in the Department.

(2) The Minister may, by writing, delegate all or any of the Minister's powers under section 359CA or 359CC to the Principal Member of the Board.

438 Delegation by Chief of the Defence Force

The Chief of the Defence Force may, in writing, delegate any of his or her functions or powers under a provision of this Act to:

(a) a person:

(i) who is engaged under the *Public Service Act 1999* and performing duties in the Department administered by the Defence Minister or the Minister; and

(ii) whose duties relate to matters to which the provision relates; or

(b) a member of the Defence Force whose duties relate to matters to which the provision relates.

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Part 7—Regulations

439 Regulations may modify effect of Chapter 2 and Parts 3 and 4 of Chapter 4

(1) The regulations may provide for how Chapter 2 and Parts 3 and 4 of Chapter 4 apply in respect of cadets and declared members.

(2) Without limiting the generality of subsection (1), the regulations may provide that Chapter 2 and Parts 3 and 4 of Chapter 4 apply with specified modifications.

440 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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Chapter 12—Application of this Act to operational service

Part 1—Preliminary

441 Simplified outline of this Chapter

This Act applies to operational service as if it were warlike service or non-warlike service. This means that persons who are taken to have been rendering operational service may be entitled to benefits and assistance under this Act.

This Chapter defines what is ***operational service***.

442 Definitions

(1) In this Chapter:

allied country means any country (not being Australia or a Commonwealth country):

(a) that was, at the relevant time, at war with the enemy; or

(b) the forces of which were, at the relevant time, engaged in an operational area against forces against which the forces of the Commonwealth were engaged in that area;

and includes:

(c) a state, province or other territory that is one of 2 or more territories that together form, or formed at the relevant time, a discrete part of such a country; and

(d) a place that is, or was at the relevant time, a territory, dependency or colony (however described) of such a country.

allotted for duty in an operational area has the meaning given by subsection (2).

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Section 442

Australian mariner means a person who was, during the period of World War 2 from its commencement to and including 29 October 1945:

(a) a master, officer or seaman employed under agreement, or an apprentice employed under indenture, in sea-going service on a ship registered in Australia that was engaged in trading between a port in a State or Territory and any other port; or

(b) a master, officer or seaman employed under agreement, or an apprentice employed under indenture, in sea-going service on a ship registered outside Australia who was, or whose dependants were, resident in Australia for at least 12 months immediately before the person entered into the agreement or indenture; or

(c) a master, officer, seaman or apprentice employed on a lighthouse tender, or pilot ship of the Commonwealth or of a State; or

(d) a pilot employed or licensed by Australia or a State or by an authority constituted by or under a law of the Commonwealth or of a State; or

(e) a master, officer, seaman or apprentice employed in sea-going service on a ship owned in Australia and operating from an Australian port, being a hospital ship, troop transport, supply ship, tug, cable ship, salvage ship, dredge, fishing vessel or fisheries investigation vessel; or

(f) a member or employee of the Commonwealth Salvage Board engaged in sea-going service under the direction of that Board; or

(g) a master, officer, seaman or apprentice employed in sea-going service on a ship registered in New Zealand who the Commission is satisfied was engaged in Australia and is not entitled to compensation under a law of a Commonwealth country providing for the payment of pensions and other payments to seamen who suffered death or disablement as a result of World War 2.

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Commonwealth country means a country (other than Australia) that is, or was at the relevant time, a part of the Dominions of the Crown, and includes:

(a) a state, province or other territory that is one of 2 or more territories that together form, or formed at the relevant time, a discrete part of such a country; and

(b) a place that is, or was at the relevant time, a territory, dependency or colony (however described) of a part of such a country.

continuous full-time operational service means:

(a) in relation to a member of the Defence Force:

(i) service in the Naval Forces of the Commonwealth of the kind known as continuous full-time naval service; or

(ii) service in the Military Forces of the Commonwealth of the kind known as continuous full-time military service; or

(iii) service in the Air Force of the Commonwealth of the kind known as continuous full-time air force service; or

(b) in relation to a member of the naval, military or air forces of a Commonwealth country or an allied country—service in those forces of a kind similar to the kind of service referred to in subparagraph (a)(i), (ii) or (iii); or

(c) if the Minister determines, under paragraph (5)(a), that a person, or a person included in a class of persons, was rendering continuous full-time operational service while rendering service of a kind specified in the determination—service of that kind that was rendered by that person or a person included in that class of persons.

eligible civilian means a person:

(a) who was killed, or detained by the enemy, during World War 2; and

(b) who was, at the time the person was killed or first detained:

(i) a British subject; and

(ii) a resident, but not an indigenous inhabitant, of the Territory of Papua or the Territory of New Guinea; and

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(c) who was not, at that time:
(i) rendering service as a member of the Defence Force; or
(ii) employed by the Commonwealth on a special mission outside Australia.

enemy means:
(a) in relation to World War 1 or World War 2—the naval, military or air forces, or any part of the naval, military or air forces, of a State at war with the Crown during that war; or
(b) in relation to service in, or a period of hostilities in respect of, an operational area—the naval, military or air forces against which the Naval, Military or Air Forces of the Commonwealth were engaged in that operational area; or
(c) persons assisting any of those forces.

fishing vessel means a ship employed in connection with the occupation of sea fishing for profit.

member of a unit of the Defence Force means:
(a) a member of the Defence Force; or
(b) another person who is:
(i) a member of the unit; or
(ii) attached to the unit; or
(iii) appointed for continuous full-time operational service with the unit; or
(c) if the Minister determines, under paragraph (5)(b), that a person, or a person included in a class of persons, was a member of a specified unit of the Defence Force while rendering service of a kind specified in the determination—the person or a person included in the class of persons.

member of the Defence Force includes a person appointed for continuous full-time operational service with a unit of the Defence Force.

Note: See also subsection (4) in relation to the Army Medical Corps Nursing Service.

member of the Interim Forces means a person who:

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(a) enlisted or re-engaged in, or was appointed or re-appointed to, the Defence Force for continuous full-time operational service for a term of not more than 2 years; or

(b) was appointed for continuous full-time operational service with a unit of the Defence Force for a term of not more than 2 years;

on or after 1 July 1947 and before 1 July 1949.

operational area has the meaning given by section 451.

period of hostilities means:

(a) World War 1 from its commencement on 4 August 1914 to 11 November 1918 (both included); or

(b) World War 2 from its commencement on 3 September 1939 to 29 October 1945 (both included); or

(c) the period of hostilities in respect of Korea from 27 June 1950 to 19 April 1956 (both included); or

(d) the period of hostilities in respect of Malaya from 29 June 1950 to 31 August 1957 (both included); or

(e) the period of hostilities in respect of war-like operations in operational areas from 31 July 1962 to 11 January 1973 (both included).

special mission means a mission that, in the opinion of the Commission, was of special assistance to the Commonwealth in the prosecution of World War 1 or World War 2.

unit of the Defence Force means a body, contingent or detachment of the Defence Force.

World War 1 means:

(a) the war that commenced on 4 August 1914; or

(b) any other war in which the Crown became engaged after 4 August 1914 and before 11 November 1918.

World War 2 means:

(a) the war that commenced on 3 September 1939; or

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(b) any other war in which the Crown became engaged after 3 September 1939 and before 3 September 1945.

Allotted for duty

(2) A reference in this Chapter to a person, or a unit of the Defence Force, that was ***allotted for duty*** in an operational area is a reference:

(a) in the case of duty that was carried out in an operational area described in item 1, 2, 3, 6, 7, 8, 9 or 10 of the table in section 451—to a person, or unit of the Defence Force, that is allotted for duty in the area (whether retrospectively or otherwise) by written instrument issued by the Defence Force for use by the Commission in determining a person's eligibility for entitlements under this Act; or

(b) in the case of duty that was carried out in an operational area described in item 4, 5, 11, 12, 13, 14, 15, 16 or 17 of the table in section 451—to a person, or unit of the Defence Force, that is allotted for duty in the area (whether retrospectively or otherwise) by written instrument signed by the Vice Chief of the Defence Force for use by the Commission in determining a person's eligibility for entitlements under this Act; or

(c) to a person, or unit of the Defence Force, that is, by written instrument signed by the Defence Minister, taken to have been allotted for duty in an operational area described in item 6 or 10 of the table in section 451.

(3) An instrument under paragraph (2)(a), (b) or (c) is not a legislative instrument.

Army Medical Corps Nursing Service

(4) For the purposes of this Chapter, a member of the Army Medical Corps Nursing Service who:

(a) rendered service during World War 1, either within or outside Australia; and

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(b) rendered the service as such a member in accordance with an acceptance or appointment by the Director-General of Medical Services for service outside Australia;

is taken to have been serving as a member of the Defence Force while rendering that service.

Determinations relating to continuous full-time operational service and member of unit of the Defence Force

(5) The Minister may, in writing, determine any of the following:

(a) that a person, or a person included in a class of persons, was rendering continuous full-time operational service while rendering service of a kind specified in the determination;

(b) that a person, or a person included in a class of persons, was a member of a specified unit of the Defence Force while rendering service of a kind specified in the determination.

(6) A determination under subsection (5) is not a legislative instrument.

End of World War 1 and World War 2

(7) For the purposes of this Chapter:

(a) World War 1 is taken to have ended on 1 September 1921; and

(b) World War 2 is taken to have ended on 28 April 1952.

Note 1: 1 September 1921 is the date fixed by Proclamation under the *Termination of the Present War (Definition) Act 1919*.

Note 2: 28 April 1952 is the date on which the Treaty of Peace with Japan came into force.

References to coordinates

(8) The coordinates in this Chapter are expressed in terms of the World Geodetic System 1984 (WGS84), as in force from time to time.

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Part 2—Application of this Act to operational service

443 This Act applies to operational service as if it were warlike service or non-warlike service

This Act applies in relation to operational service that a person is taken to have been rendering as if:

(a) the operational service were warlike service or non-warlike service; and

(b) the person who is taken to have been rendering the operational service were a member who had rendered warlike service or non-warlike service.

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Part 3—Service that is operational service

Division 1—Operational service

444 Operational service—world wars

(1) Subject to subsection (3), a person referred to in an item of the following table is taken to have been rendering ***operational service*** during any period during which the person was rendering service of a kind referred to in the item.

Operational service		
Item	**Person**	**Nature of service**
1	A member of the Defence Force	(a) continuous full-time operational service outside Australia during World War 1 or World War 2; or (b) continuous full-time operational service for a period of at least 3 months in that part of the Northern Territory that is north of the parallel 14°30′S (including any of the islands adjoining the Northern Territory) between 19 February 1942 and 12 November 1943 (both dates inclusive); or (c) continuous full-time operational service during World War 1 or World War 2 rendered within Australia immediately before, or immediately after, a period of continuous full-time operational service of the kind referred to in paragraph (a) or (b); or (d) continuous full-time operational service rendered within Australia during World War 2 in such circumstances that the service should, in the opinion of the Commission, be treated as service in actual combat against the enemy

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Operational service		
Item	**Person**	**Nature of service**
2	A member of the Defence Force who enlisted in the Defence Force while living on a Torres Strait Island	(a) continuous full-time operational service for a period of at least 3 months on that island between 14 March 1942 and 18 June 1943 (both dates inclusive); or (b) continuous full-time operational service during World War 1 or World War 2 rendered within Australia immediately before, or immediately after, a period of continuous full-time operational service of the kind referred to in paragraph (a)
3	A member of the naval, military or air forces of a Commonwealth country or of an allied country who was domiciled in Australia or an external Territory immediately before the member's appointment or enlistment in those forces	Continuous full-time operational service during World War 1 or World War 2 rendered: (a) outside that country; or (b) within that country but in such circumstances that the service should, in the opinion of the Commission, be treated as service in actual combat against the enemy

Note: Section 19B may affect a person's domicile immediately before appointment or enlistment.

(2) A person referred to in an item of the following table is taken to have been rendering ***operational service*** during the period, or at the time, specified in the item.

Operational service		
Item	**Person**	**Relevant period or time**
1	A person who was, during World War 1 or World War 2, employed by the Commonwealth on a special mission outside Australia	The period during which the person was so employed by the Commonwealth
2	An eligible civilian who was killed, during the invasion of the Territory of Papua or the Territory of New Guinea during World	The time of the event as a result of which the person was killed

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Operational service		
Item	**Person**	**Relevant period or time**
	War 2, as a result of action by the enemy	
3	An eligible civilian who was detained by the enemy during World War 2	The period during which the person was so detained
4	A person who, while rendering continuous full-time operational service as a member of the Defence Force within Australia during World War 2, was injured, or contracted a disease, as a result of enemy action	The time of the event as a result of which the person was injured or contracted the disease

(3) Any continuous full-time operational service that was rendered during World War 2 by a member of the Defence Force (other than a member of the Interim Forces) on or after the cut-off date for the member is not taken to be ***operational service***.

(4) For the purposes of subsection (3), the ***cut-off date*** for a member of the Defence Force is the date applicable to the member in accordance with the following table.

Cut-off date		
Item	**Member**	**Date**
1	A member who was appointed or enlisted for war service in any part of the Defence Force that was raised during World War 2 for war service, or solely for service during that war or during that war and a definite period immediately following that war	1 July 1951
2	A member who was appointed or enlisted in the Citizen Forces and was called up for continuous full-time operational service for the duration of, or directly in connection with, World War 2	1 July 1951
3	A member who served in the British Commonwealth Occupation Force in Japan	1 July 1951, or the date on which the member arrived back in Australia

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Cut-off date		
Item	**Member**	**Date**
		on the completion of the member's service in that Force, whichever is the earlier
4	Any other member	3 January 1949

445 Operational service—Australian mariners

(1) A person is taken to have been rendering ***operational service*** during:

(a) any period of employment outside Australia as an Australian mariner on a ship; or

(b) any period of employment within Australia as an Australian mariner on a ship if that period of employment ended immediately before, or started immediately after, the period of employment referred to in paragraph (a).

(2) A person who, while employed within Australia as an Australian mariner on a ship, was injured, or contracted a disease, as a result of enemy action is taken to have been rendering ***operational service*** at the time of the event as a result of which the person was injured or contracted the disease.

(3) A person who was employed within Australia as an Australian mariner on a ship in such circumstances that the employment should, in the opinion of the Commission, be treated as employment in actual combat against the enemy is taken to have been rendering ***operational service*** while the person was so employed.

(4) Without limiting paragraph (1)(a), a person is taken to have been employed outside Australia as an Australian mariner on a ship in each of the following circumstances:

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(a) at any time when the person was at a place outside Australia on leave from the ship while the ship was at a port outside Australia;

(b) at any time when the person was outside Australia while on the person's way to take up employment as an Australian mariner on a ship;

(c) while the person was awaiting return to Australia from employment as an Australian mariner on a ship;

(d) while the person was returning to Australia from employment as an Australian mariner on a ship.

(5) For the purposes of this section, if a person was employed as an Australian mariner on a ship undertaking a voyage for the purpose of going from a place within Australia to another place within Australia, the person is taken to have been employed within Australia during the whole of the voyage.

(6) In this section:

Australia does not include an external Territory.

446 Operational service—post-World War 2 service in operational areas

(1) Subject to this section, a member of the Defence Force who has rendered continuous full-time operational service in an operational area as:

(a) a member who was allotted for duty in that area; or

(b) a member of a unit of the Defence Force that was allotted for duty in that area;

is taken to have been rendering ***operational service*** in the operational area while the member was so rendering continuous full-time operational service.

(2) A member of the naval, military or air forces of a Commonwealth country or of an allied country who:

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(a) was domiciled in Australia or an external Territory immediately before the member's appointment or enlistment in those forces; and

(b) has rendered continuous full-time operational service in an operational area;

is taken to have been rendering ***operational service*** in the operational area while the member was so rendering continuous full-time operational service.

Note: Section 19B may affect a person's domicile immediately before appointment or enlistment.

(3) For the purposes of subsection (1), a member of the Defence Force is, subject to subsection (4), taken to have rendered continuous full-time operational service in an operational area during the period commencing on:

(a) if the member was in Australia on the day (the ***relevant day***) from which the member, or the unit of the member, was allotted for duty in that area—on the day on which the member left the last port of call in Australia for that service; or

(b) if the member was outside Australia on the relevant day—on that day;

and ending at the end of:

(c) if the member, or the unit of the member, ceased to be allotted for duty—the day from which the member, or the unit, ceased to be allotted for duty; or

(d) if the member, or the unit of the member, was assigned for duty from the operational area to another area outside Australia (not being an operational area)—the day from which the member, or the unit, was assigned to that other area, or the day on which the member, or the unit, arrived at that other area, whichever is the later; or

(e) in any other case—the day on which the member arrived at the first port of call in Australia on returning from operational service.

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(4) If, while rendering continuous full-time operational service in an operational area, a member of the Defence Force has:

(a) returned to Australia in accordance with the Rest and Recuperation arrangements of the naval, military or air forces; or

(b) returned to Australia on emergency or other leave granted on compassionate grounds; or

(c) returned to Australia on duty; or

(d) returned to Australia for the purpose of receiving medical or surgical treatment as directed by the medical authorities of the Defence Force;

only so much of the period of service of the member within Australia after the member's return and while the member:

(e) continued to be allotted for duty in an operational area; or

(f) continued to be a member of a unit of the Defence Force allotted for duty in an operational area;

as does not exceed 14 days is taken, for the purposes of subsection (1), to be a period when the member was rendering continuous full-time operational service in the operational area.

447 Operational service—other post-World War 2 service

(1) This section applies to a member of the Defence Force who, or a member of a unit of the Defence Force that:

(a) was assigned for service:

(i) in Singapore at any time during the period from and including 29 June 1950 to and including 31 August 1957; or

(ii) in Japan at any time during the period from and including 28 April 1952 to and including 19 April 1956; or

(iii) in North East Thailand (including Ubon) at any time during the period from and including 28 July 1962 to and including 24 June 1965; or

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(iv) in North East Thailand (not including Ubon) at any time during the period from and including 31 May 1962 to and including 27 July 1962; or

(b) was, at any time during the period from and including 1 August 1960 to and including 27 May 1963, in the area comprising the territory of Singapore and the country then known as the Federation of Malaya;

but so applies only if the member, or the unit of the member, is included in a written instrument issued by the Defence Force for use by the Commission in determining a person's eligibility for entitlements under this Act.

Note: Service in Ubon in Thailand between 31 May 1962 and 27 July 1962 is taken to be operational service because of section 446 and item 4 of the table in section 451.

(2) An instrument under subsection (1) is not a legislative instrument.

(3) A person to whom this section applies is taken to have been rendering ***operational service*** during any period during which the person was rendering continuous full-time operational service as:

(a) a member of the Defence Force; or

(b) a member of a unit of the Defence Force;

while the person was in the area described in paragraph (1)(a) or attached to the Far East Strategic Reserve (as the case may be).

(4) For the purposes of subsection (3), the operational service of a person to whom this section applies:

(a) is taken to have started:

(i) if the person was in Australia on the day (the ***relevant day***) from which the person's unit was assigned for service as described in paragraph (1)(a) or attached to the Far East Strategic Reserve (as the case may be)—on the day on which the member left the last port of call in Australia for that service; or

(ii) if the person was outside Australia on the relevant day—on that day; and

(b) is taken to have ended:

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(i) if the member was assigned for service in another country or area outside Australia (not being an operational area)—the day from which the member was assigned to that other country or area, or the day on which the member arrived at that other country or area, whichever is the later; or

(ii) in any other case—the day on which the member arrived at the first port of call in Australia on returning from operational service.

448 Operational service—minesweeping and bomb/mine clearance service

A member of the Defence Force is taken to have been rendering ***operational service*** during any period of service in respect of which the member has been awarded, or has become eligible to be awarded, the Naval General Service Medal or the General Service Medal (Army and Royal Air Force) with the Minesweeping 1945-51 Clasp, the Bomb-Mine Clearance 1945-53 Clasp, the Bomb and Mine Clearance 1945-49 Clasp or the Bomb and Mine Clearance 1945-56 Clasp.

449 Operational service—service on submarine special operations

A member of the Defence Force for whom the following are satisfied:

(a) the member has rendered continuous full-time operational service on a submarine for a period that started on or after 1 January 1978 and ended on or before the end of 12 May 1997;

(b) the member has rendered continuous full-time operational service on submarine special operations (the ***special service***) at any time in the period beginning on 1 January 1978 and ending at the end of 12 May 1997;

(c) the member:

(i) has been awarded the Australian Service Medal with Clasp "SPECIAL OPS" for the special service; or

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(ii) has become eligible for that award for the special service; or

(iii) would have been eligible for that award for the special service if the member had not already been awarded it for other service;

is taken to have been rendering ***operational service*** during each period covered by paragraph (a).

450 Operational service—Korean demilitarised zone and Vietnam

A member of the Defence Force who was assigned for service:

(a) in the demilitarised zone between North Korea and South Korea after 18 April 1956; or

(b) on HMA Ship Vampire or Quickmatch in Vietnam during the period from and including 25 January 1962 to and including 29 January 1962;

is taken to have been rendering ***operational service*** while the member was so rendering continuous full-time operational service in that zone or in Vietnam (as the case may be) during the period in which the member was so assigned for service.

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Division 2—Operational areas

451 Meaning of *operational area*

An area described in an item of the following table was an ***operational area*** during the period specified in the item.

Operational areas

Item	Area	Period
1	The area of Korea, including the waters contiguous to the coast of Korea for a distance of 185 kilometres seaward from the coast	The period from and including 27 June 1950 to and including 19 April 1956
2	The area of Malaya, including the waters contiguous to the coast of Malaya for a distance of 18.5 kilometres seaward from the coast	The period from and including 29 June 1950 to and including 31 August 1957
3	The area comprising the territories of the countries then known as the Federation of Malaya and the Colony of Singapore, respectively	The period from and including 1 September 1957 to and including 31 July 1960
4	Ubon in Thailand	The period from and including 31 May 1962 to and including 27 July 1962
5	North East Thailand (including Ubon)	The period from and including 25 June 1965 to and including 31 August 1968
6	Vietnam (Southern Zone)	The period from and including 31 July 1962 to and including 11 January 1973
7	All that part of the Federation of Malaya contained within the area bounded by a line: (a) commencing at the intersection of the	The period from and including 1 August 1960 to and including 16 August 1964

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Operational areas		
Item	**Area**	**Period**
	western shore of the Federation of Malaya at high-water mark and the boundary between the States of Perlis and Kedah; (b) then proceeding generally north-easterly along that boundary to its intersection with the railway line from Arau to Penang Tunggal; (c) then following that railway line generally southerly to its intersection with the northern boundary between the States of Penang and Kedah; (d) then proceeding along the boundary between those States generally easterly, southerly and westerly to the intersection of the boundaries of the States of Penang, Kedah and Perak; (e) then following the boundary between the States of Penang and Perak to its intersection with the railway line from Penang Tunggal to Taiping; (f) then following that railway line generally southerly, easterly and southerly to its intersection with the parallel 04°51′N; (g) then proceeding due south in a straight line to the intersection of that line with the parallel 04°30′N; (h) then proceeding along that parallel to its intersection with the eastern bank of the Perak River; (i) then following that bank of that river to its intersection with the parallel 04°47′N; (j) then proceeding in a straight line to the intersection of the boundaries of the States of Perak, Kelantan and Pahang; (k) then proceeding along the boundary between the States of Kelantan and Pahang	

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Operational areas

Item	Area	Period
	to its intersection with the meridian 101°48′E; (l) then proceeding in a straight line to the intersection of the eastern bank of the Raya River with the eastern bank of the Nenggiri River; (m) then following that bank of that river to its intersection with the western bank of the Galas River; (n) then proceeding in a straight line due east to the eastern bank of that river; (o) then following that bank of that river and the eastern bank of the Kelantan River to its intersection with the eastern shore of the Federation of Malaya at high-water mark; (p) then following that shore at high-water mark to its intersection with the boundary between the Federation of Malaya and Thailand; (q) then proceeding along that boundary to the western shore of the Federation of Malaya and Thailand at high-water mark; (r) then following that shore of the Federation of Malaya at high-water mark to the point of commencement	
8	All that area of land and waters (other than islands and waters forming part of the territory of the Republic of the Philippines) bounded by a line: (a) commencing at the intersection of the northern shore of Borneo at high-water mark with the boundary between Kalimantan and Sarawak; (b) then proceeding generally south-easterly, easterly and northerly along that boundary	The period from and including 8 December 1962 to and including 16 August 1964

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Operational areas

Item	Area	Period
	to its junction with the boundary between Kalimantan and Sabah; (c) then proceeding generally easterly along that boundary to its intersection with the eastern shore of Borneo at high-water mark; (d) then proceeding in a straight line easterly to the intersection of the western shore of the island of Sebatik at high-water mark with the boundary between that part of that island that forms part of Sabah and that part of that island that forms part of Kalimantan; (e) then proceeding generally easterly along that boundary to its intersection with the eastern shore of the island of Sebatik at high-water mark; (f) then proceeding in a straight line easterly to a point 80.5 kilometres east (true) of the intersection of the eastern shore of Borneo at high-water mark with the boundary between Kalimantan and Sabah; (g) then proceeding generally northerly and south-westerly parallel to and at a distance of 80.5 kilometres from the eastern and northern shores, respectively, of Borneo at high-water mark to a point 80.5 kilometres north (true) of the point of commencement; (h) then proceeding in a straight line southerly to the point of commencement	
9	The territories of Malaysia, Brunei and Singapore and the waters adjacent to those countries	The period from and including 17 August 1964 to and including 14 September 1966
10	All that area of land and waters (other than land or waters forming part of the territory of	The period from and including 31 July 1962 to

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Operational areas

Item	Area	Period
	Cambodia or China) bounded by a line: (a) commencing at the intersection of the boundary between Cambodia and Vietnam (Southern Zone) with the shore of Vietnam (Southern Zone) at high-water mark; (b) then proceeding in a straight line to a point 185.2 kilometres west (true) of that intersection; (c) then proceeding along an imaginary line parallel to, and at a distance of 185.2 kilometres from, the shore of Vietnam at high-water mark to its intersection with the parallel 21°30′N; (d) then proceeding along that parallel westerly to its intersection with the shore of Vietnam at high-water mark; (e) then following the shore of Vietnam at high-water mark to the point of commencement	and including 11 January 1973
11	The area comprising the United Nations Mandated Territory of Namibia and the area of land extending 400 kilometres outwards from the borders of Namibia into the adjoining countries of Angola, Zambia, Zimbabwe, Botswana and South Africa (including Walvis Bay)	The period from and including 18 February 1989 to and including 10 April 1990
12	The area comprising the following countries and sea areas: (a) Bahrain, Oman, Qatar, Saudi Arabia, the United Arab Emirates and the Island of Cyprus; (b) the sea areas contained within the Gulf of Suez, the Gulf of Aqaba, the Red Sea, the Gulf of Aden, the Persian Gulf and the Gulf of Oman; (c) the sea area contained within the Arabian	The period from and including 2 August 1990 to and including 9 June 1991

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Operational areas		
Item	**Area**	**Period**
	Sea north of the boundary formed by joining each of the following points to the next: (i) 20°30′N 070°40′E; (ii) 14°30′N 067°35′E; (iii) 08°30′N 060°00′E; (iv) 06°20′N 053°52′E; (v) 05°48′N 049°02′E; (d) the sea area contained within the Suez Canal and the Mediterranean Sea east of 030°E	
13	The area comprising Iraq and Kuwait	The period from and including 23 February 1991 to and including 9 June 1991
14	The area comprising Cambodia and the areas in Laos and Thailand that are not more than 50 kilometres from the border with Cambodia	The period from and including 20 October 1991 to and including 7 October 1993
15	The area comprising the former Yugoslavia	The period from and including 12 January 1992 to and including 24 January 1997
16	The area comprising Somalia	The period from and including 20 October 1992 to and including 30 November 1994
17	The area of the Red Sea north of the parallel 20°N	The period from and including 13 January 1993 to and including 19 January 1993

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

C[x] = Compilation No. x

ch = Chapter(s)

cl = clause(s)

cont. = continued

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

Ord = Ordinance

orig = original

p = page(s)

para = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

pt = Part(s)

r = regulation(s)/Court rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s) /rule(s)/subrule(s)/order(s)/suborder(s)

sch = Schedule(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

sub ch = Sub-Chapter(s)

sub div = Subdivision(s)

sub pt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent or Registration	Commencement	Application, saving and transitional provisions
Military Rehabilitation and Compensation Act 2004	51, 2004	27 Apr 2004	s 3–359 and 386–440: 1 July 2004 (gaz 2004, No GN22) Remainder: Royal Assent	
Administrative Appeals Tribunal Amendment Act 2005	38, 2005	1 Apr 2005	Sch 1 (item 227): 16 May 2005	—
Defence Legislation Amendment Act (No. 1) 2005	121, 2005	6 Oct 2005	Sch 5 (items 25–28): 1 Jan 2005 (s 2(1) item 3)	—
Veterans' Affairs Legislation Amendment (Statements of Principles and Other Measures) Act 2007	29, 2007	15 Mar 2007	Sch 4 (items 1, 2, 5, 6, 13–31): 16 Mar 2007 Sch 4 (items 3, 4, 7–12): 1 July 2004 (s 2(1) items 4, 6)	Sch. 4 (items 2, 24, 27)
Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007	54, 2007	12 Apr 2007	Sch 1 (items 1–4, 40): 13 Apr 2007	Sch. 1 (item 40)
Veterans' Affairs Legislation Amendment (2007 Measures No. 1) Act 2007	89, 2007	21 June 2007	Sch 2: 22 June 2007	Sch. 2 (items 3, 4)
Social Security and Veterans' Affairs Legislation Amendment (Enhanced Allowances) Act 2008	5, 2008	20 Mar 2008	Sch 3 (items 1–10, 36): 20 Mar 2008	Sch. 3 (item 36)

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Act	Number and year	Assent or Registration	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 1 (item 34): 1 July 2004 (s 2(1) item 24)	—
Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Act 2008	81, 2008	12 July 2008	Sch 3 (items 1–7): 13 July 2008 Sch 3 (item 8): 16 Mar 2007 (s 2(1) item 10)	Sch. 3 (items 4, 7)
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Sch 15 (items 33–46): 1 July 2009	—
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Sch 19: 1 July 2009 (s 2(1) item 42)	Sch. 19 (item 9) (ad. by SLI 2009 No. 165, Sch. 2 [item 9])
as amended by				
Fair Work (State Referral and Consequential and Other Amendments) Regulations 2009	SLI 2009 No. 165	30 June 2009 (F2009L02568)	1 July 2009	—
as amended by				
Fair Work Legislation Amendment Regulations 2009 (No. 2)	SLI 2009 No. 364	16 Dec 2009 (F2009L04520)	Sch 1: 1 July 2009	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 2 (item 9): 1 July 2009 (s 2(1) item 8)	—

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Endnote 3—Legislation history

Act	Number and year	Assent or Registration	Commencement	Application, saving and transitional provisions
Veterans' Affairs Legislation Amendment (Budget Measures) Act 2009	80, 2009	10 Sept 2009	Sch 1 (items 1, 2): 11 Sept 2009	—
Veterans' Affairs and Other Legislation Amendment (Pension Reform) Act 2009	81, 2009	10 Sept 2009	Sch 4 (items 16–53, 214): 20 Sept 2009 Sch 4 (items 68–78): 20 Sept 2009 (s 2(1) item 9)	Sch. 4 (item 214)
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 5 (item 137(a)): 1 Mar 2010 (s 2(1) items 31, 38)	—
Social Security and Other Legislation Amendment (Income Support for Students) Act 2010	17, 2010	24 Mar 2010	Sch 2 (item 10): 1 Apr 2010	—
Veterans' Affairs and Other Legislation Amendment (Miscellaneous Measures) Act 2010	120, 2010	17 Nov 2010	Sch 1 (items 12, 14, 37–41): Royal Assent Sch 1 (items 42–44): 18 Nov 2010	Sch. 1 (items 14, 44)
Veterans' Affairs Legislation Amendment (Weekly Payments) Act 2010	135, 2010	24 Nov 2010	Sch 1 (items 1–3): Royal Assent	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 768–772) and Sch 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Military Rehabilitation and Compensation Amendment (MRCA Supplement) Act 2011	87, 2011	26 July 2011	26 July 2011	—

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Endnote 3—Legislation history

Act	Number and year	Assent or Registration	Commencement	Application, saving and transitional provisions
Clean Energy (Household Assistance Amendments) Act 2011	141, 2011	29 Nov 2011	Sch 4 (items 1–9): 14 May 2012 Sch 4 (items 10–16): 20 Mar 2013 Sch 4 (items 17–22): 1 July 2013	—
Social Security and Other Legislation Amendment (2012 Budget and Other Measures) Act 2012	98, 2012	29 June 2012	Sch 2 (items 15, 88(1)): 1 Jan 2013 Sch 2 (item 74): 1 July 2013 (s 2(1) item 4) Sch 2 (item 75): 20 Mar 2013 (s 2(1) item 5)	Sch. 2 (item 88(1))
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (item 56): 12 Mar 2014	Sch 6 (items 1, 15–19)
Veterans' Affairs Legislation Amendment (Military Compensation Review and Other Measures) Act 2013	99, 2013	28 June 2013	Sch 1 (items 1–77), Sch 2, Sch 3 (items 1–16, 49–52), Sch 4, Sch 5 (items 1–47), Sch 6, Sch 7, Sch 8 and Sch 12: 1 July 2013 Sch 9 and Sch 15 (items 1–8): Royal Assent Sch 11 (items 1–10): 10 Dec 2013 Sch 13 (items 5–8, 12): 26 July 2013	Sch. 1 (items 76, 77), Sch. 2 (items 13, 14), Sch. 3 (items 49–52), Sch. 4 (item 3), Sch. 5 (items 46, 47), Sch. 6 (item 8), Sch. 7 (item 29), Sch. 8 (item 2), Sch. 12 (item 4), Sch. 13 (item 12) and Sch. 15 (item 8)

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Endnote 3—Legislation history

Act	Number and year	Assent or Registration	Commencement	Application, saving and transitional provisions
Veterans' Affairs Legislation Amendment (Miscellaneous Measures) Act 2014	5, 2014	28 Feb 2014	Sch 1 (items 6–24): 28 Feb 2014 (s 2)	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 3 (item 1) and Sch 8 (item 29): 24 June 2014 (s 2(1) item 9)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 10 (items 9–11) and Sch 14: 1 July 2014 (s 2(1) items 6 and 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—

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Act	Number and year	Assent or Registration	Commencement	Application, saving and transitional provisions
Veterans' Affairs Legislation Amendment (Mental Health and Other Measures) Act 2014	74, 2014	30 June 2014	Sch 4 (items 42–49): 28 July 2014 (s 2(1) item 4) Sch 6 and 7: 30 June 2014 (s 2(1) item 5)	Sch 4 (item 49) and Sch 6 (item 2)
Military Rehabilitation and Compensation Amendment Act 2014	104, 2014	24 Sept 2014	25 Sept 2014 (s 2)	Sch 1 (item 3)
Social Services and Other Legislation Amendment (2014 Budget Measures No. 6) Act 2014	122, 2014	26 Nov 2014	Sch 1 (items 262–283): 20 Sept 2014 (s 2(1) item 2)	Sch 1 (item 283)
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 1 (items 24–31): 25 Mar 2015 (s 2(1) item 2)	—
Tribunals Amalgamation Act 2015	60, 2015	26 May 2015	Sch 8 (items 36, 37) and Sch 9: 1 July 2015 (s 2(1) items 19, 22)	Sch 9
Social Services and Other Legislation Amendment (Seniors Supplement Cessation) Act 2015	91, 2015	26 June 2015	Sch 1 (items 54–56): 20 June 2015 (s 2(1) item 2)	Sch 1 (item 56)
Defence Legislation Amendment (Superannuation and ADF Cover) Act 2015	120, 2015	10 Sept 2015	Sch 1 (items 55, 56): 11 Sept 2015 (s 2(1) item 2)	—
Statute Law Revision Act (No. 2) 2015	145, 2015	12 Nov 2015	Sch 4 (item 31): 10 Dec 2015 (s 2(1) item 7)	—

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Endnote 3—Legislation history

Act	Number and year	Assent or Registration	Commencement	Application, saving and transitional provisions
Defence Legislation Amendment (First Principles) Act 2015	164, 2015	2 Dec 2015	Sch 2 (items 60–65, 80): 1 July 2016 (s 2(1) item 2)	Sch 2 (item 80)
Budget Savings (Omnibus) Act 2016	55, 2016	16 Sept 2016	Sch 24: 1 Jan 2017 (s 2(1) item 26)	Sch 24 (item 13)
Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 2016	102, 2016	7 Dec 2016	Sch 1: 1 Jan 2017 (s 2(1) item 2) Sch 3: 1 July 2017 (s 2(1) item 4)	Sch 1 (items 47, 48) and Sch 3 (item 10)
Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Act 2017	28, 2017	4 Apr 2017	Sch 1 (items 1, 2): 5 Apr 2017 (s 2(1) item 2)	—
Veterans' Affairs Legislation Amendment (Budget Measures) Act 2017	59, 2017	22 June 2017	Sch 1 (item 34) and Sch 3 (items 1–10): 1 July 2017 (s 2(1) items 4, 6)	Sch 3 (item 10)
Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017	108, 2017	14 Sept 2017	Sch 3 (items 13–21): 12 Oct 2017 (s 2(1) item 5)	—
Veterans' Affairs Legislation Amendment (Omnibus) Act 2017	128, 2017	30 Nov 2017	Sch 1 (items 9, 10), Sch 3 (item 2), Sch 4 (items 1–3), Sch 5 (items 1–3), Sch 6, Sch 7 (items 7–14) and Sch 8 (items 20–25, 27): 1 Dec 2017 (s 2(1) items 2, 4, 6, 8, 10)	Sch 5 (item 3), Sch 7 (item 11) and Sch 8 (item 27)

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Act	Number and year	Assent or Registration	Commencement	Application, saving and transitional provisions
Marriage Amendment (Definition and Religious Freedoms) Act 2017	129, 2017	8 Dec 2017	Sch 3 (item 37) and Sch 4: 9 Dec 2017 (s 2(1) item 7)	Sch 4
as amended by				
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (item 540): 1 Sept 2021 (s 2(1) item 5)	—
Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No. 1) Act 2018	17, 2018	28 Mar 2018	Sch 1 and Sch 2 (items 49–52): 1 May 2018 (s 2(1) items 2, 3) Sch 3 (item 1) and Sch 4: 25 Apr 2018 (s 2(1) item 8) Sch 6 (item 1): 29 Mar 2018 (s 2(1) item 9)	Sch 4 (item 11)
Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No. 2) Act 2018	70, 2018	29 June 2018	Sch 1 (items 1, 2): 1 Nov 2018 (s 2(1) item 2) Sch 3 and Sch 6: 27 July 2018 (s 2(1) items 4, 7)	Sch 3 (item 2) and Sch 6 (item 8)
Veterans' Affairs Legislation Amendment (Omnibus) Act 2018	135, 2018	25 Oct 2018	Sch 1: 26 Oct 2018 (s 2(1) item 1)	Sch 1 (item 3)

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Endnote 3—Legislation history

Act	Number and year	Assent or Registration	Commencement	Application, saving and transitional provisions
Treatment Benefits (Special Access) (Consequential Amendments and Transitional Provisions) Act 2019	42, 2019	5 Apr 2019	Sch 1 (item 1) and Sch 2 (item 12): 6 Apr 2019 (s 2(1) item 2)	Sch 1 (item 1)
Health Legislation Amendment (Data-matching and Other Matters) Act 2019	121, 2019	12 Dec 2019	Sch 2 (item 8): 13 Dec 2019 (s 2(1) item 1)	—
Military Rehabilitation and Compensation Amendment (Single Treatment Pathway) Act 2019	122, 2019	12 Dec 2019	Sch 1 (items 1–24, 28–32): 12 Dec 2019 (s 2(1) item 1)	Sch 1 (items 28–32)
Statute Update (Regulations References) Act 2020	18, 2020	6 Mar 2020	Sch 1 (items 32, 33): 6 Sept 2020 (s 2(1) item 1)	—
Veterans' Affairs Legislation Amendment (Supporting the Wellbeing of Veterans and Their Families) Act 2020	108, 2020	26 Nov 2020	Sch 1 (items 1–4): 17 Dec 2020 (s 2(1) item 2) Sch 2: 29 Mar 2021 (s 2(1) item 3)	—
Veterans' Affairs Legislation Amendment (Exempting Disability Payments from Income Testing and Other Measures) Act 2021	142, 2021	13 Dec 2021	Sch 5: 1 Jan 2022 (s 2(1) item 4)	—
Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Act 2022	3, 2022	17 Feb 2022	Sch 1 (items 70, 71): 18 Feb 2022 (s 2(1) item 3)	Sch 1 (item 71)

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Act	Number and year	Assent or Registration	Commencement	Application, saving and transitional provisions
Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022	34, 2022	5 Aug 2022	Sch 6 (items 9–11, 19): 6 Aug 2022 (s 2(1) item 8)	Sch 6 (item 19)
Defence, Veterans' and Families' Acute Support Package Act 2022	40, 2022	7 Oct 2022	Sch 1 (items 1–9): 14 Oct 2022 (s 2(1) item 1)	Sch 1 (item 9)

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Military Rehabilitation and Compensation and Other Legislation Amendment (Incapacity Payments) Act 2022 (C2022A00041)	41, 2022	7 Oct 2022	sch 1 (items 1, 2): 7 Oct 2022 (s 2(1) item 1)	sch 1 (item 2)
Veterans' Affairs Legislation Amendment (Miscellaneous Measures) Act 2023 (C2023A00041)	41, 2023	28 June 2023	sch 2 (item 1), sch 5 (item 1): 29 June 2023 (s 2(1) item 1)	—
Veterans' Affairs Legislation Amendment (Miscellaneous Measures No. 2) Act 2023 (C2023A00042)	42, 2023	28 June 2023	sch 4 (items 1, 2, 7): 28 June 2023 (s 2(1) item 1)	sch 4 (item 7)

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Act 2023 (C2023A00103)	103, 2023	28 Nov 2023	sch 2 (item 11): 1 Jan 2024 (s 2(1) item 2)	—
Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024 (C2024A00038)	38, 2024	31 May 2024	sch 15 (items 5-15, 42): 14 Oct 2024 (s 2(1) item 2)	—
Administrative Review Tribunal (Miscellaneous Measures) Act 2025 (C2025A00014)	14, 2025	20 Feb 2025	sch 2 (items 72-77): 21 Feb 2025 (s 2(1) item 2) sch 3 (items 11, 12): 21 Apr 2025 (s 2(1) item 6)	—
Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Act 2025 (C2025A00017)	17, 2025	20 Feb 2025	sch 1 (items 1-31, 45-91, 109-123, 126-136, 138-167, 198-201), sch 2 (items 1-8, 19-34, 46-49, 64-75, 86-96, 98-106, 116-124, 128-161), sch 3 (items 110-115), sch 4 (items 1-40), sch 5 (items 1-27), sch 7 (item 1): 1 July 2026 (s 2(1) items 2, 4, 5) sch 3 (items 1-17): 21 Apr 2025 (s 2(1) item 3)	—

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aged Care and Other Legislation Amendment Act 2025 (C2025A00045)	45, 2025	19 Sept 2025	sch 3 (items 233-235): 1 Nov 2025 (s 2(1) item 6)	—
Regulatory Reform Omnibus Act 2025 (C2025A00073)	73, 2025	4 Dec 2025	sch 4 (items 43, 44): 5 Dec 2025 (s 2(1) item 16)	—
Veterans' Affairs Legislation Amendment (Miscellaneous Measures No. 1) Act 2025 (C2025A00076)	76, 2025	4 Dec 2025	sch 1 (items 4, 5): 1 July 2026 (s 2(1) item 4)	—
Veterans' Affairs Legislation Amendment (Miscellaneous Measures No. 2) Act 2026 (C2026A00031)	31, 2026	1 Apr 2026	sch 1 (items 1-7, 12-28): 1 July 2026 (s 2(1) items 2, 4, 5, 6)	—

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Endnote 3—Legislation history

Number and year	Registration	Commencement	Application, saving and transitional provisions
50, 2006	17 Mar 2006 (F2006L00820)	Sch 18: 27 Mar 2006 (r 2(b))	—

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Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 1	
Part 1 heading	ad No 17, 2025
s 3	am No 81, 2009; No 128, 2017; No 17, 2018; No 142, 2021; No 40, 2022; No 17, 2025
s 4A	ad No 28, 2017
s 5	am No 81, 2008; No 144, 2008; No 81, 2009; No 46, 2011; No 141, 2011; No 99, 2013; No 31, 2014; No 74, 2014; No 122, 2014; No 120, 2015; No 164, 2015; No 102, 2016; No 28, 2017; No 128, 2017; No 129, 2017; No 17, 2018; No 38, 2024; No 14, 2025; No 17, 2025
Part 2	
Part 2 heading	ad No 17, 2025
s 6	am No 17, 2025
s 6A	ad No 17, 2025
s 6B	ad No 17, 2025
s 6C	ad No 17, 2025
Part 3	
Part 3 heading	ad No 17, 2025
s 7A	ad No 99, 2013
s 8	am No 5, 2014
s 10	am No 99, 2013; No 18, 2020
s 11	am No 5, 2014
s 12	am No 17, 2025
s 15	am No 144, 2008; No 17, 2018
s 16	rs No 144, 2008
s 17	rs No 74, 2014
s 18	am No 144, 2008
s 19A	ad No 17, 2025

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Endnote 4—Amendment history

Provision affected	How affected
s 19B	ad No 17, 2025
Chapter 2	
Part 1	
s 21	am No 17, 2025
Part 2	
s 22	am No 17, 2025
s 23	am No 17, 2025
s 24A	ad No 17, 2025
Part 3	
s 27	am No 17, 2025
s 27A	ad No 17, 2025
s 28	am No 17, 2025
s 29	am No 89, 2007; No 17, 2025; No 31, 2026
Part 4	
s 32	am No 29, 2007
s 36	am No 17, 2025
Chapter 3	
Part 1	
Division 1	
s 37	am No 99, 2013; No 59, 2017; No 142, 2021
Division 2	
s 38	am No 59, 2017
Division 3	
s 39	am No 99, 2013
Part 2	
Part 2 heading	rs No 142, 2021
Division 1	
s 42	am No 99, 2013; No 59, 2017
s 43	am No 59, 2017; No 17, 2025
Division 2	
s 49	am No 17, 2025

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Provision affected	How affected
s 50	am No 59, 2017
Division 3	
s 52	am No 59, 2017
Part 2A	
Part 2A	ad No 142, 2021
s 53A	ad No 142, 2021
s 53B	ad No 142, 2021
	am No 17, 2025
s 53C	ad No 142, 2021
s 53D	ad No 142, 2021
Part 3	
Division 1	
s 55	am No 17, 2025
Division 2	
s 59	am No 17, 2025
Part 4	
s 60	am No 128, 2017
s 61	am No 99, 2013
s 62	am No 17, 2025
s 62A	ad No 128, 2017
Part 5	
s 63	rs No 99, 2013
s 64	am No 99, 2013
Chapter 4	
Part 1	
s 65	am No 5, 2014; No 17, 2025
Part 2	
s 67	am No 5, 2014; No 128, 2017
s 68	am No 17, 2025
s 71	am No 17, 2025
s 75	am No 99, 2013

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Provision affected	How affected
s 77	am No 99, 2013; No 17, 2025
s 78	am No 17, 2025
s 79	am No 5, 2014; No 17, 2025
s 80	am No 144, 2008; No 17, 2025
s 80A	ad No 17, 2025
s 81	am No 99, 2013
s 82	am No 99, 2013
s 83	am No 99, 2013; No 17, 2025
s 83A	ad No 141, 2011
	am No 98, 2012; No 122, 2014
Part 3	
Division 1	
s 84	am No 99, 2013; No 102, 2016
s 85	am No 99, 2013; No 17, 2025
s 86	am No 99, 2013; No 17, 2025
s 87	am No 99, 2013; No 18, 2020; No 17, 2025
s 89	am No 54, 2009; No 99, 2013
s 89A	ad No 99, 2013
	am No 102, 2016
s 89B	ad No 102, 2016
Division 2	
s 91	am No 29, 2007; No 99, 2013
Division 3	
Subdivision C	
s 96	am No 29, 2007; No 99, 2013
Division 4	
s 104	am No 99, 2013
Division 5	
Subdivision C	
s 109	am No 99, 2013

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Provision affected	How affected
Subdivision D	
s 114	am No 99, 2013
Division 7	
Division 7 heading	rs No 102, 2016
Division 7	ad No 99, 2013
s 116A	ad No 99, 2013
	am No 102, 2016
s 116B	ad No 99, 2013
s 116C	ad No 99, 2013
s 116D	ad No 99, 2013
s 116E	ad No 99, 2013
Part 4	
Division 1	
s 118	am No 102, 2016; No 17, 2025
s 120	am No 29, 2007; No 102, 2016
s 121	am No 29, 2007; No 102, 2016
Division 2	
Subdivision A	
s 123	am No 73, 2008
Subdivision B	
s 124	am No 102, 2016
s 125	am No 102, 2016
s 126	am No 102, 2016
s 126A	ad No 102, 2016
Subdivision C	
Subdivision C heading	rs No 102, 2016
s 131	am No 70, 2018; No 41, 2022
s 132	am No 54, 2009
Subdivision D	
Subdivision D heading	rs No 102, 2016
s 133	am No 102, 2016

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Provision affected	How affected
s 134	am No 99, 2013
s 135	am No 99, 2013
Subdivision E	
s 137	am No 102, 2016
s 138	am No 102, 2016
s 139	am No 102, 2016
Division 3	
s 141	am No 99, 2013
Division 4	
Subdivision C	
s 144	am No 99, 2013
Subdivision D	
s 149	am No 99, 2013
Division 5	
Subdivision C	
s 154	am No 29, 2007; No 99, 2013
Division 6	
s 161	am No 29, 2007; No 99, 2013
Division 7	
s 164	am No 99, 2013
Division 8	
Subdivision C	
s 168	am No 99, 2013
Subdivision D	
s 173	am No 99, 2013
Part 5	
Division 2	
s 178	am No 54, 2009
s 179	am SLI No 50, 2006; No 54, 2009
Division 3	
s 185	am SLI 2006 No 50; No 54, 2009

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Provision affected	How affected
s 188	am No 99, 2013
s 189	am No 29, 2007; No 99, 2013
Division 4	
s 193	am SLI 2006 No 50; No 54, 2009
Division 5	
s 196	am No 81, 2008
Part 6	
s 197	am No 102, 2016; No 17, 2025
s 198	am No 17, 2025
s 199	am No 99, 2013; No 17, 2025
s. 204	am No. 29, 2007; No 141, 2011; No 99, 2013; No 122, 2014
s 204A	ad No 99, 2013
	am No 17, 2025
s 205	am No 99, 2013
s 206	am No 99, 2013
s 207	am No 99, 2013; No 17, 2025
s. 209A	ad. No. 141, 2011
	am. No. 98, 2012; No 122, 2014
s 210	am No 5, 2014
Part 7	
Division 1	
s 211	am No 5, 2014; No 17, 2025
Division 2	
s 212	am No 5, 2014; No 17, 2025
Division 3	
s 213	am No 17, 2018
s 214	am No 17, 2025
s 216	am No 17, 2018
s 217	am No 17, 2025
s 219	am No 17, 2018
s 220	am No 17, 2025

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Endnote 4—Amendment history

Provision affected	How affected
Division 3A	
Division 3A	ad No 17, 2025
s 220A	ad No 5, 2008
	rep No 81, 2009
	ad No 17, 2025
	am No 31, 2026
s 220B	ad No 17, 2025
s 220C	ad No 17, 2025
s 220D	ad No 17, 2025
Division 4	
Division 4 heading	rs. No. 81, 2009
s 221	am No 81, 2009; No 17, 2025
s 222	am No 5, 2008; No 81, 2009; No 87, 2011; No 91, 2015; No 17, 2018; No 17, 2025
s 223	rs No 5, 2008; No 81, 2009
	am No 17, 2025
s. 223A	ad. No. 5, 2008
	rep. No. 81, 2009
s 224	am No 5, 2008
	rs No 81, 2009; No 135, 2010
	am No 17, 2025
s. 225	rep. No. 81, 2009
Division 5	
s. 228	am. No. 29, 2007
s 230	am No 17, 2025
Division 6	
Division 6	ad No 17, 2025
s 230A	ad No 17, 2025
s 230B	ad No 17, 2025
Division 7	
Division 7	ad No 17, 2025

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Provision affected	How affected
s 230C	ad No 17, 2025
Chapter 5	
Part 1	
s 231	am No 17, 2025
Part 2	
Division 1	
s 232	am No 99, 2013; No 5, 2014
Division 2	
s 234	am No 81, 2008; No 120, 2010; No 99, 2013; No 17, 2025
s 235	am No 99, 2013
s 236	am No 99, 2013; No 70, 2018
s. 237	am. No. 29, 2007
	rep No 99, 2013
s 238	am No 17, 2025
s. 238A	ad. No. 141, 2011
	am No 98, 2012; No 122, 2014
Division 3	
Division 3 heading	rs No 99, 2013
s 239	am No 99, 2013
s 240	am No 99, 2013
s 241	am No 99, 2013; No 17, 2025
Division 4	
s 242	am No 17, 2025
s 244	am No 17, 2025
Division 5	
Division 5 heading	rs. No. 81, 2009
s. 244A	ad. No. 5, 2008
	rep. No. 81, 2009
s 245	am No 81, 2009; No 17, 2025
s 246	am No 5, 2008; No 81, 2009; No 87, 2011; No 91, 2015; No 17, 2018; No 17, 2025

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Provision affected	How affected
s 247	rs No 5, 2008; No 81, 2009
	am No 17, 2025
s 247A	ad No 5, 2008
	rep No 81, 2009
s 248	am No 5, 2008
	rs No 81, 2009; No 135, 2010
	am No 17, 2025
s. 249	rep. No. 81, 2009
Part 3	
Division 3	
s 254	am No 29, 2007; No 99, 2013
Division 4	
s 255	am No 17, 2025
Division 5	
s 257	am No 29, 2007; No 17, 2025
Division 6	
Division 6 heading	rs No 17, 2025
Subdivision A	
Subdivision A heading	ad No 17, 2025
s 257A	ad No 17, 2025
s 257B	ad No 17, 2025
s 257C	ad No 17, 2025
Subdivision B	
Subdivision B heading	ad No 17, 2025
s 258	am No 17, 2010; No 5, 2014; No 17, 2018; No 17, 2025; No 31, 2026
s 264	am No 17, 2025
Part 5	
Division 1	
Division 1 heading	ad No 17, 2025
s 265	rs No 17, 2025

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Provision affected	How affected
Division 2	
Division 2 heading	ad No 17, 2025
s 266A	ad No 17, 2025
	rep No 31, 2026
s 267	am No 54, 2007
s 267A	ad No 17, 2025
	am No 31, 2026
s 268	am No 17, 2025
Division 3	
Division 3	ad No 17, 2025
s 268AA	ad No 17, 2025
	am No 31, 2026
s 268AB	ad No 17, 2025
	am No 31, 2026
s 268AC	ad No 17, 2025
	am No 31, 2026
s 268AD	ad No 17, 2025
s 268AE	ad No 17, 2025
Chapter 5AA	
Chapter 5AA	ad No 17, 2025
Part 1	
s 268AF	ad No 17, 2025
s 268AG	ad No 17, 2025
s 268AH	ad No 17, 2025
Part 2	
s 268AI	ad No 17, 2025
s 268AJ	ad No 17, 2025
s 268AK	ad No 17, 2025
Part 3	
s 268AL	ad No 17, 2025
s 268AM	ad No 17, 2025

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Provision affected	How affected
s 268AN	ad No 17, 2025
s 268AO	ad No 17, 2025
Chapter 5A	
Chapter 5A heading	rs No 108, 2020
	am No 40, 2022
Chapter 5A	ad No 17, 2018
Part 1	
Part 1 heading	ad No 108, 2020
	am No 40, 2022
s 268A	ad No 17, 2018
	am No 108, 2020; No 40, 2022
s 268B	ad No 17, 2018
	rs No 40, 2022
	am No 42, 2023; No 17, 2025
Part 2	
Part 2	ad No 108, 2020
s 268C	ad No 108, 2020
s 268D	ad No 108, 2020
Chapter 6	
Part 1	
s 269	am No 81, 2009; No 122, 2019
Part 2	rep No 122, 2019
s 270	rep No 122, 2019
s 271	am No 5, 2015
	rep No 122, 2019
s 272	am No 99, 2013; No 5, 2015
	rep No 122, 2019
s 273	rep No 122, 2019
s 274	rep No 122, 2019
s 275	rep No 122, 2019
s 276	rep No 122, 2019

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Provision affected	How affected
s 277	rep No 122, 2019
Part 3	
Division 1	
s 278	am No 81, 2009; No 99, 2013; No 108, 2017; No 122, 2019; No 17, 2025
Division 2	
s 279	am No 99, 2013; No 5, 2015; No 122, 2019; No 17, 2025; No 31, 2026
s 280	am No 122, 2019; No 17, 2025
s 280A	ad No 99, 2013
	am No 108, 2017; No 17, 2018; No 17, 2025
s 281	am No 122, 2019; No 17, 2025; No 31, 2026
s 282	am No 122, 2019
s 282A	ad No 31, 2026
Division 3	
s 284	am No 122, 2019
Division 3A	
Division 3A	ad No 17, 2025
s 284A	ad No 17, 2025
	am No 31, 2026
Division 4	
s 286	am No 121, 2005; No 8, 2010; No 99, 2013; No 128, 2017; No 45, 2025
s 287	am No 99, 2013; No 128, 2017; No 17, 2025; No 45, 2025
s 287A	ad No 17, 2018
s 287B	ad No 17, 2025
s 287C	ad No 17, 2025
Part 4	
Division 1	
s 288	am No 5, 2014; No 122, 2019; No 17, 2025

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Provision affected	How affected
Division 1A	
Division 1A	ad No 122, 2019
s 288A	ad No 122, 2019
s 288B	ad No 122, 2019
s 288C	ad No 122, 2019
s 288D	ad No 122, 2019
s 288E	ad No 122, 2019
s 288F	ad No 122, 2019
s 288G	ad No 122, 2019
	am No 17, 2025
Division 2	
s 289	am No 99, 2013; No 108, 2017; No 122, 2019; No 17, 2025
s 290	am No 17, 2025
s 291A	ad No 17, 2025
s 293	am No 121, 2005; No 41, 2023
s 296	am No 17, 2025
Division 3	
s 297	am No 17, 2025
s 299	am No 17, 2025
Division 4	
Division 4 heading	rs No 81, 2009
s 300	am No 81, 2009; No 99, 2013; No 108, 2017; No 17, 2025
s 301	am No 81, 2009; No 87, 2011; No 99, 2013; No 59, 2017; No 17, 2018; No 42, 2019; No 17, 2025
s 302	am No 81, 2009; No 17, 2025
s 303	am No 81, 2009
	rs No 135, 2010
	am No 17, 2025
Part 5	
s 305	am No 122, 2019
s 306	am No 122, 2019

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Provision affected	How affected
Chapter 7	
Part 1	
Division 1	
s 318	am No 99, 2013; No 122, 2019
Division 2	
s 319	am No 99, 2013; No 70, 2018; No 135, 2018; No 17, 2025; No 76, 2025
s 320	am No 29, 2007; No 135, 2018; No 122, 2019; No 17, 2025
s 321	am No 99, 2013; No 17, 2025
s 322	am No 81, 2008; No 17, 2025; No 76, 2025
s 323	am No 70, 2018
Division 3	
Subdivision A	
s 324	am No 17, 2025
Subdivision B	
s 325	am No 17, 2025
s 326	am No 122, 2019
s 327	am No 29, 2007; No 81, 2008
	rep No 122, 2019
Subdivision C	
s 328	am No 5, 2014
Subdivision D	
s 330	am No 41, 2023
s 331	am No 99, 2013
Part 2	
s 332	am No 17, 2025
s 333	am No 17, 2025
s 335	am No 99, 2013; No 17, 2025
s 336	am No 17, 2025
s 337	am No 89, 2007
s 338	am No 17, 2025

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Provision affected	How affected
s 339	am No 120, 2010; No 17, 2025
s 340	am No 5, 2014; No 17, 2025
s 340A	ad No 17, 2025
s 341	rs No 17, 2025
	am No 17, 2025
s 343	am No 17, 2025
Chapter 8	
Part 1	
s 344	am No 99, 2013; No 55, 2016; No 38, 2024
s 345	am No 99, 2013; No 104, 2014; No 5, 2015; No 102, 2016; No 17, 2018; No 122, 2019; No 17, 2025
s 345A	ad No 141, 2011
	am No 55, 2016
s 345B	ad No 40, 2022
	am No 17, 2025
Part 2	
s 346	am No 99, 2013; No 55, 2016
Part 3	
s 347	am No 99, 2013
s 347A	ad No 104, 2014
s 348	am No 99, 2013; No 14, 2025
s 349	am No 99, 2013; No 55, 2016
s 350	am No 14, 2025
s 351	am No 99, 2013; No 38, 2024
Part 4	
Part 4	rs No 17, 2025
Division 1	
s 352	am No 55, 2016
	rs No 17, 2025
Division 2	
s 352A	ad No 17, 2025

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Provision affected	How affected
	am No 17, 2025
s 352B	ad No 17, 2025
s 352C	ad No 17, 2025
	rs No 31, 2026
s 352D	ad No 17, 2025
s 352E	ad No 17, 2025
Division 3	
s 352F	ad No 17, 2025
s 352G	ad No 17, 2025
	am No 31, 2026
s 352H	ad No 17, 2025
s 352J	ad No 17, 2025
s 352K	ad No 17, 2025
s 352L	ad No 17, 2025
s 352M	ad No 17, 2025
s 352N	ad No 17, 2025
s 352P	ad No 17, 2025
s 352Q	ad No 17, 2025
s 352R	ad No 17, 2025
s 352S	ad No 17, 2025
s 352T	ad No 17, 2025
Division 4	
s 352U	ad No 17, 2025
s 352V	ad No 17, 2025
s 352W	ad No 17, 2025
s 352X	ad No 17, 2025
s 352Y	ad No 17, 2025
s 352Z	ad No 17, 2025
s 353	am No 29, 2007; No 99, 2013; No 74, 2014; No 128, 2017
	rs No 17, 2025

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Endnote 4—Amendment history

Provision affected	How affected
Division 5	
s 353A	ad No 99, 2013
	rep No 74, 2014
	ad No 17, 2025
s 353B	ad No 17, 2025
	am No 31, 2026
s 353C	ad No 17, 2025
	am No 14, 2025; No 31, 2026
s 353D	ad No 17, 2025
s 353E	ad No 17, 2025
s 353F	ad No 17, 2025
s 353G	ad No 17, 2025
Division 6	
s 353H	ad No 17, 2025
s 353J	ad No 17, 2025
s 353K	ad No 17, 2025
s 353L	ad No 17, 2025
Division 7	
s 353M	ad No 17, 2025
s 353N	ad No 17, 2025
s 353P	ad No 17, 2025
s 353Q	ad No 17, 2025
s 353R	ad No 17, 2025
	am No 31, 2026
s 353S	ad No 17, 2025
s 353T	ad No 17, 2025
s 353U	ad No 17, 2025
Part 5	
s 354	am No 99, 2013; No 55, 2016; No 38, 2024; No 17, 2025
s 355	am No 38, 2005; No 99, 2013; No 60, 2015; No 3, 2022; No 38, 2024

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Provision affected	How affected
s 355A	ad No 38, 2024
s 357	am No 99, 2013; No 60, 2015; No 55, 2016; No 38, 2024; No 14, 2025; No 17, 2025
s 359	am No 55, 2016
Chapter 8A	
Chapter 8A	ad No 17, 2025
Part 1	
s 359A	ad No 17, 2025
Part 2	
s 359B	ad No 17, 2025
	am No 17, 2025
s 359BA	ad No 17, 2025
Part 3	
Division 1	
s 359C	ad No 17, 2025
s 359CA	ad No 17, 2025
s 359CB	ad No 17, 2025
s 359CC	ad No 17, 2025
s 359CD	ad No 17, 2025
s 359CE	ad No 17, 2025
s 359CF	ad No 17, 2025
s 359CG	ad No 17, 2025
s 359CH	ad No 17, 2025
s 359CI	ad No 17, 2025
Division 2	
s 359CJ	ad No 17, 2025
s 359CK	ad No 17, 2025
s 359CL	ad No 17, 2025
s 359CM	ad No 17, 2025
s 359CN	ad No 17, 2025

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Provision affected	How affected
Part 4	
s 359D	ad No 17, 2025
s 359DA	ad No 17, 2025
s 359DB	ad No 17, 2025
s 359DC	ad No 17, 2025
s 359DD	ad No 17, 2025
Chapter 9	
Chapter 9	rs No 17, 2025
Part 1	
s 360	am No 46, 2011
	rep No 17, 2025
s 360A	ad No 17, 2025
Part 2	
s 360B	ad No 17, 2025
s 360BA	ad No 17, 2025
s 360BB	ad No 17, 2025
s 360BC	ad No 17, 2025
s 361	rep No 17, 2025
Part 3	
Division 1	
s 360C	ad No 17, 2025
s 360CA	ad No 17, 2025
s 360CB	ad No 17, 2025
s 360CC	ad No 17, 2025
s 360CD	ad No 17, 2025
s 360CE	ad No 17, 2025
s 360CF	ad No 17, 2025
s 360CG	ad No 17, 2025
s 360CH	ad No 17, 2025
s 360CI	ad No 17, 2025
s 360CJ	ad No 17, 2025

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Provision affected	How affected
s 360CK	ad No 17, 2025
Division 2	
s 360CL	ad No 17, 2025
s 360CM	ad No 17, 2025
s 360CN	ad No 17, 2025
s 360CO	ad No 17, 2025
s 360CP	ad No 17, 2025
s 360CQ	ad No 17, 2025
s 360CR	ad No 17, 2025
s 362	am No 164, 2015
	rep No 17, 2025
Part 4	
s 360D	ad No 17, 2025
s 360DA	ad No 17, 2025
s 360DB	ad No 17, 2025
s 360DC	ad No 17, 2025
s 363	am No 62, 2014
	rep No 17, 2025
Part 5	
s 364	am No 99, 2013; No 74, 2014; No 108, 2020
	rep No 17, 2025
s 365	rep No 17, 2025
s 366	am No 46, 2011; No 108, 2020
	rep No 17, 2025
s 367	am No 46, 2011; No 99, 2013; No 74, 2014
	rep No 17, 2025
s 368	rep No 46, 2011
s 369	rep No 17, 2025
s 370	rep No 17, 2025
s 371	rep No 17, 2025
s 372	am No 62, 2014; No 74, 2014

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Endnote 4—Amendment history

Provision affected	How affected
	rep No 17, 2025
Part 6	
s 373	rep No 17, 2025
s 374	rep No 17, 2025
s 375	rep No 17, 2025
s 376	rep No 17, 2025
s 377	rep No 17, 2025
s 378	rep No 17, 2025
s 379	rep No 17, 2025
s 380	rep No 17, 2025
s 381	rep No 62, 2014
Part 7	
s 382	rep No 17, 2025
s 383	rep No 17, 2025
s 384	am No 29, 2007
	rep No 17, 2025
s 385	rep No 17, 2025
Chapter 9A	
Chapter 9A	ad No 17, 2025
Part 1	
s 370A	ad No 17, 2025
Part 2	
s 370B	ad No 17, 2025
s 370BA	ad No 17, 2025
s 370BB	ad No 17, 2025
Part 3	
Division 1	
s 370C	ad No 17, 2025
s 370CA	ad No 17, 2025
Division 2	
s 370CB	ad No 17, 2025

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Provision affected	How affected
s 370CC	ad No 17, 2025
Division 3	
Subdivision A	
s 370CD	ad No 17, 2025
s 370CE	ad No 17, 2025
s 370CF	ad No 17, 2025
Subdivision B	
s 370CG	ad No 17, 2025
Subdivision C	
s 370CH	ad No 17, 2025
s 370CI	ad No 17, 2025
Subdivision D	
s 370CJ	ad No 17, 2025
s 370CK	ad No 17, 2025
s 370CL	ad No 17, 2025
Division 4	
s 370CM	ad No 17, 2025
s 370CN	ad No 17, 2025
Part 4	
Division 1	
s 370D	ad No 17, 2025
s 370DA	ad No 17, 2025
s 370DB	ad No 17, 2025
s 370DC	ad No 17, 2025
s 370DD	ad No 17, 2025
s 370DE	ad No 17, 2025
s 370DF	ad No 17, 2025
s 370DG	ad No 17, 2025
Division 2	
s 370DH	ad No 17, 2025
s 370DI	ad No 17, 2025

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Endnote 4—Amendment history

Provision affected	How affected
s 370DJ	ad No 17, 2025
s 370DK	ad No 17, 2025
s 370DL	ad No 17, 2025
s 370DM	ad No 17, 2025
Part 5	
s 370E	ad No 17, 2025
s 370EA	ad No 17, 2025
s 370EB	ad No 17, 2025
s 370EC	ad No 17, 2025
Chapter 9B	
Chapter 9B	ad No 17, 2025
Part 1	
s 380A	ad No 17, 2025
Part 2	
s 380B	ad No 17, 2025
s 380BA	ad No 17, 2025
s 380BB	ad No 17, 2025
Part 3	
Division 1	
s 380C	ad No 17, 2025
s 380CA	ad No 17, 2025
Division 2	
s 380CB	ad No 17, 2025
s 380CC	ad No 17, 2025
Division 3	
s 380CD	ad No 17, 2025
s 380CE	ad No 17, 2025
Division 4	
s 380CF	ad No 17, 2025
s 380CG	ad No 17, 2025
s 380CH	ad No 17, 2025

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Provision affected	How affected
s 380CI	ad No 17, 2025
Part 4	
Division 1	
s 380D	ad No 17, 2025
s 380DA	ad No 17, 2025
s 380DB	ad No 17, 2025
s 380DC	ad No 17, 2025
s 380DD	ad No 17, 2025
s 380DE	ad No 17, 2025
s 380DF	ad No 17, 2025
s 380DG	ad No 17, 2025
s 380DH	ad No 17, 2025
Division 2	
s 380DI	ad No 17, 2025
s 380DJ	ad No 17, 2025
s 380DK	ad No 17, 2025
s 380DL	ad No 17, 2025
s 380DM	ad No 17, 2025
s 380DN	ad No 17, 2025
Part 5	
s 380E	ad No 17, 2025
s 380EA	ad No 17, 2025
Chapter 10	
Part 1	
s 386	am No 17, 2025
Part 2	
s 388	am No 81, 2009; No 17, 2025
s 389	am No 17, 2025
s 390	am No 17, 2025

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Provision affected	How affected
Part 3	
Division 1	
s 391	am No 17, 2025
Division 2	
s 392	am No 17, 2025
s 397	am No 17, 2025
s 398	am No 81, 2009
	am No 17, 2025
Division 3	
Division 3 heading	am No 17, 2025
s 399	am No 17, 2025
s 401	am No 81, 2009; No 17, 2025
s 402	am No 81, 2009; No 17, 2025
Division 4	
s 403	am No 81, 2009; No 17, 2025
Chapter 11	
Part 1	
s 404	am No 54, 2007; No 141, 2011; No 99, 2013; No 122, 2014: No 145, 2015; No 17, 2018; No 73, 2025
s 404A	ad No 17, 2025
s 404B	ad No 17, 2025
Part 2	
s 405	am No 17, 2025
s 406	am No 17, 2025
s 407A	ad No 17, 2025
s 407B	ad No 17, 2025
s 408A	ad No 120, 2010
	am No 99, 2013
s 409	am No 197, 2012; No 99, 2013; No 128, 2017; No 121, 2019; No 34, 2022; No 103, 2023; No 17, 2025; No 45, 2025
s 409A	ad No 17, 2025

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Provision affected	How affected
s 410	am No 17, 2025
s 411	am No 17, 2025
s 411A	ad No 17, 2025
s 411B	ad No 17, 2025
Part 3	
Division 1	
s 415	am No 141, 2011; No 128, 2017; No 40, 2022; No 17, 2025
Division 2	
Division 2 heading	rs No 102, 2016
s 416	am No 17, 2025
s 417	am No 120, 2010; No 99, 2013; No 102, 2016
s 418	am No 102, 2016
s 419	am No 102, 2016
s 420	am No 120, 2010; No 99, 2013; No 102, 2016
s 421	am No 102, 2016
Part 4	
s 423	am No 29, 2007; No 99, 2013; No 108, 2017; No 128, 2017; No 17, 2018; No 108, 2020; No 17, 2025
Part 5	
s 424	am No 5, 2014; No 17, 2025
Part 5A	
Part 5A	ad No 141, 2011
Division 1	rep No 128, 2017
s 424A	ad No 141, 2011
	am No 98, 2012
	rep No 128, 2017
s 424B	ad No 141, 2011
	am No 98, 2012
	rep No 128, 2017
s 424C	ad No 141, 2011
	am No 98, 2012

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Endnote 4—Amendment history

Provision affected	How affected
	rep No 128, 2017
s 424D	ad No 141, 2011
	rep No 128, 2017
Division 2	rep No 128, 2017
s 424E	ad No 141, 2011
	rep No 128, 2017
s 424F	ad No 141, 2011
	rep No 128, 2017
s 424G	ad No 141, 2011
	rep No 128, 2017
Division 3	rep No 128, 2017
s 424H	ad No 141, 2011
	rep No 128, 2017
Division 4	rep No 128, 2017
s 424J	ad No 141, 2011
	rep No 128, 2017
Division 5	rep No 128, 2017
s 424K	ad No 141, 2011
	rep No 128, 2017
Division 6	
s 424L	ad No 141, 2011
	am No 17, 2025
Part 5B	
Part 5B	ad No 17, 2025
s 424M	ad No 17, 2025
Part 6	
s 427A	ad No 17, 2025
s 427B	ad No 17, 2025
s 428	am No 17, 2025
s 429	am No 17, 2025
s 430	am No 80, 2009; No 120, 2010; No 141, 2011; No 99, 2013;

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Provision affected	How affected
	No 122, 2014; No 17, 2025
s 430A	ad No 99, 2013
	am No 17, 2025
s 431	am No 5, 2014; No 31, 2026
s 432	rs No 17, 2025
s 433	am No 144, 2008; No 17, 2025
s 434	am No 17, 2025
s 435	am No 17, 2025
s 437A	ad No 128, 2017
	am No 17, 2025
s 438	rs No 99, 2013; No 164, 2015
	am No 17, 2025
Chapter 12	
Chapter 12	ad No 17, 2025
Part 1	
s 441	ad No 17, 2025
s 442	ad No 17, 2025
Part 2	
s 443	ad No 17, 2025
Part 3	
Division 1	
s 444	ad No 17, 2025
s 445	ad No 17, 2025
s 446	ad No 17, 2025
s 447	ad No 17, 2025
s 448	ad No 17, 2025
s 449	ad No 17, 2025
s 450	ad No 17, 2025
Division 2	
s 451	ad No 17, 2025

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