

1974

AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL COMPENSATION BILL 1974

EXPLANATORY MEMORANDUM

(Circulated by the Special Minister for State,
the Hon. L. Bowen)

Introductory Note

The purpose of this Bill is to provide legislative authority for -

1. implementation of comprehensive compensation for every Australian, including visitors to Australia, who, from any cause, at any time and in any place, suffers a significant physical or mental incapacity;
2. provision of earnings-related benefits throughout the period of total incapacity;
3. provision of a convalescent allowance to employees able to perform light work;
4. provision of automatic adjustments to benefits related to quarterly changes in the Consumer Price Index;
5. review of benefits where circumstances justify;
6. provision for periodic payment of benefits;
7. commutation of benefits to a lump sum under certain conditions;
8. payment of a lump sum for severe facial or bodily disfigurement;
9. payment of a lump sum to a widow and in certain cases upon re-marriage;

10. payment of periodic benefits to dependent survivors;
11. payment of reasonable funeral expenses where a person dies as a result of injury or disease in respect of which there is cover under the scheme;
12. payment of benefits to the age of 65 years for permanent partial or total incapacity;
13. defining what is personal injury;
14. introduction in four stages, benefits for prospective personal injury to apply from 1 July 1976 and benefits for prospective illness to apply not before 1 July 197
15. determination of the claimant's income for the purposes of payments of benefits;
16. using a notional income to calculate benefits payable to non-earners;
17. setting minimum and maximum income amounts for the calculation of benefits;
18. determining procedures for lodgement of claims for benefits and their determination;
19. establishment of Appeals Tribunals to determine appeals against determinations;
20. the constitution of Appeals Tribunals, conditions applying to members, procedures and powers of those Tribunals;
21. appeals to a Court on points of law;
22. substitution of benefits paid under this legislation for other claims for damages in respect of injury, sickness or death, to which a person might be entitled
23. recovery of benefits paid where an amount has already been received by way of damages in respect of that injury, sickness or death;
24. prosecution and recovery of amounts overpaid in certain cases;

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EXPLANATORY MEMORANDUM

ADDENDUM

Clause 37

Provides that the Secretary shall give effect to the decision of an Appeal Tribunal as though it were a certificate of the medical practitioner.

Clause 40

Provides that benefits should be paid during the first week of any disability of a type covered by workers' compensation legislation.

Clause 46

Benefits under the clause are payable to persons who have not obtained the qualifying age.

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25. the making of regulations, not inconsistent with the Act, as are necessary giving effect to the Act.

The purpose of this part of the memorandum is to explain the main features of each clause of the Bill.

PART 1 - PRELIMINARY

Clause 1: Short Title

This clause provides for the citation of the Act by its short title.

Clause 2: Commencement

Clause 2 provides that the Act will come into operation on the day on which it receives Royal Assent.

Clause 3: Australia and States to be bound

This clause provides that the Act shall bind Australia and each State.

Clause 4: Interpretation

The definitions and terms used in the Act are detailed in this clause.

Clause 5: Definition of employment

Clause 5 defines as an employee specified categories of persons who would not normally be considered as employees to ensure that they are brought within the provisions of the scheme.

PART 11 - ADMINISTRATION

Clause 6: National Compensation Offices

This clause permits the Secretary to establish offices where he considers these are necessary.

Clause 7: Exercise of powers of Secretary by Officers

Clause 7 authorises the exercise by officers of certain of the powers of the Secretary.

PART 111 - BENEFITS IN RESPECT OF PERSONAL INJURYClause 8: Personal injury

Personal injury is defined for the purposes of this Act by reference to injury or damage resulting from an occurrence specified in the Schedule.

Clause 9: Mental shock, psychiatric illness, etc.

This clause sets out a number of other occurrences including occupational diseases, noise deafness and congenital disabilities which are personal injury for the purposes of the Bill.

Clause 10: Misadventures

A misadventure in connection with medical, surgical, dental or first-aid treatment, care or attention is also personal injury for the purposes of the Bill. This clause has the effect of removing the need to sue for negligence.

Clause 11: Acceleration etc., of diseases

This clause provides that the contraction or aggravation of a disease as a result of injury is treated, for the purposes of the Bill, as personal injury.

Clause 12: Inclusion of work-related malignant neoplasia and cardiac episodes

This clause provides that cancers and cardiac episodes that are contracted or aggravated in the course of employment are personal injuries for the purposes of the Bill.

Clause 13: Persons injured during crimes

Clause 13 excludes from the operation of the scheme injury suffered during the course of committing or attempting to commit certain specified crimes if the person is convicted of the offence. Should the injury result in death however, dependent survivor would be eligible to receive benefits.

Clause 14: Exclusion of judicial execution

This clause excludes rights to benefits where death results from judicial execution.

Clause 15: Application to ships, etc.

This clause provides that the application of the Bill to the waters and air space above the continental shelf shall not extend to injury or sickness occurring on a ship, boat or aircraft unless that ship, boat or aircraft is registered in Australia or operating from Australia.

Clause 16: Benefits in respect of personal injury

Clause 16 provides for the payment of benefits where a person, whether his normal place of residence is in Australia or not, is incapacitated as a result of personal injury suffered by him in Australia. It also provides that benefits are payable in respect of personal injury suffered outside Australia in a number of circumstances including persons who have left Australia in connection with their employment, to receive education or to undertake research, or in other cases during the first year overseas. Visitors to Australia will be eligible for benefits in respect of incapacity resulting from injury suffered in Australia.

Clause 17: Age and other limits for benefits

This clause excludes payment of benefits for injury sustained before the commencing date unless the injury resulted in permanent incapacity or temporary incapacity which continued past that date, and the person has exhausted all remedies in respect of that injury and has not recovered damages for it. Persons under the age of 18 years and not working at the time of injury are also excluded from benefits on reaching 18 years unless any temporary incapacity

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continues after the age of 18 years or a permanent incapacity has resulted.

Clause 18: Benefits not payable to certain persons

Clause 18 excludes payment of benefits to a person until that person reaches the qualifying age, and excludes payment in respect of a period before reaching that age. An upper age limit of 65 years is also provided for the payment of benefits except where the person was incapacitated by injury after attaining 61 years, in which case benefits are payable for a maximum period of four years from commencement of the incapacity.

Clause 19: Commencement of benefits

This clause provides that benefit shall not be payable for an injury occurring on or after 1 July 1976 in respect of any period before that date and if an injury occurs before 1 July 1976, benefits payable for it after the date of proclamation of stage 2 shall be payable from that date proclaimed or date of lodgement of the claim, whichever is the later.

PART IV - BENEFITS IN RESPECT OF SICKNESS

Clause 20: Extension of Act to sickness

This clause provides that the provisions of the Bill are to apply in respect of sickness as for personal injury.

Clause 21: Date from which sickness benefits are payable

Benefits are to be paid in respect of sickness from a date to be fixed by proclamation but not before 1 July 1979.

Clause 22: Age and other limits for benefits

Section 22 lays down that benefit under this Part is not payable -

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- in respect of sickness occurring before the date proclaimed for the operation of stage 3 (i.e. sickness) or before the person attained the qualifying age, unless the sickness resulted or results in either permanent incapacity, or temporary incapacity extending beyond, or commencing after that date, and any remedies in respect of the sickness have been exhausted and the person has not recovered damages in respect of the sickness.
- to a person who has not attained the qualifying age or in respect of a period before the person attains the qualifying age.
- to a person who has attained or after he attains the age of 65 years.
- in respect of a period prior to the proclaimed date or before a claim for benefit is lodged whichever is the later date.

Clause 23: Benefits not payable to non-residents

Benefits for sickness are only payable to persons whose usual place of residence is in Australia. Visitors to Australia are excluded from sickness benefits.

Clause 24: Commencement of benefits in certain cases

Benefits for illness will not commence until 22 days after incapacity commences.

PART V - RATES OF BENEFIT

Division I - Interpretation

Clause 25: Interpretation

Clause 25 defines "child", "incapacitated person", and clarifies the rights of adopted children and illegitimate children for the purposes of entitlement to benefits.

Division 2 - Weekly IncomeClause 26: Ascertainment of weekly income

This clause provides that weekly income for the purpose of calculating benefits will be taken as that income estimated under the provisions of this Division.

Clause 27: Weekly income - short-term

Clause 27 provides for the ascertainment of the weekly income of an employee, and a self-employed person, having regard to the total income received or determined by the Secretary as fairly representing what has been received in the case of a self-employed person, during the preceding four weeks. This figure is then used for the calculation of benefits where the incapacity is of short-term duration.

Clause 28: Weekly income - long-term

This clause provides for the ascertainment of the weekly income of an employee, having regard to the total income received, during the year ending on the previous 30th June. In the case of a self-employed person the income received during the year ending on 30 June last, or income based on the previous three years, whichever is taken as fairly representing his earnings may be used. The alternatives allow avoidance of fluctuations in occupations such as farming which might be affected by seasonal and other influences. The figures arrived at for employees and self-employed are the up-dated in accordance with subsequent movements in Average Weekly Earnings to arrive at an income level. This figure is then used for the calculation of benefits where the incapacity exceeds four week

Clause 29: Weekly income - young persons

This clause authorises the Secretary to determine what a young person's weekly earnings would have been at ages 21 and 26 years, where the person had attained the age of 15 years at the time the incapacity commenced. There is provision also for a minimum earning of not less than \$50.

Determination of a weekly earnings figure is necessary to permit a calculation to be made of the benefit payable, having regard to the lost earning potential of the young person.

Clause 30: Determination of weekly income in special circumstances

Clause 30 provides for the determination of a weekly income in special circumstances and where the Secretary considers the amount ascertained in accordance with the provisions of previous clauses does not fairly represent the earnings of that person.

Clause 31: Maximum and minimum weekly income

This clause sets out that, for the calculation of benefits, a maximum weekly income of \$500 and a minimum weekly income of \$50 apply.

Division 3 - Incapacity BenefitsClause 32: Benefits in respect of incapacity

Clause 32 provides that benefits are payable to incapacitated persons in accordance with the provisions of the Division.

Clause 33: Rate of benefit in respect of permanent partial incapacity

The formula to be used to calculate the weekly rate of benefit payable to a person in respect of permanent partial incapacity is to have regard to Average Weekly Earnings and the percentage of the person's incapacity. If a person did not derive any earnings in the year immediately preceding

commencement of incapacity, a figure of 60 per centum only of the Average Weekly Earnings is to be used in the formula. The weekly rate of benefit calculated under this provision is not to exceed 85 per centum of the weekly income calculated on a long-term basis for young people or in special circumstances. It is further provided that the weekly rate of benefit calculated under this provision is to be varied in accordance with changes in the Consumer Price Index.

Clause 34: Increase in degree of incapacity

This clause provides that the benefit payable to a person is to be increased where a medical practitioner certifies that there has been an increase in that person's incapacity.

Clause 35: Ascertainment of degree of incapacity

A medical practitioner is to certify, in writing, the percentage of a person's incapacity. The percentage is to be a multiple of 5 per cent. A percentage of 5 or 10 is to be taken as not incapacitated and a percentage of 85 or more as totally incapacitated. In giving a certificate, the medical practitioner is to take into account the extent to which a person's personal efficiency and ability to lead a normal life have been impaired, as well as the person's physical or mental disability. In determining this impairment, regard is to be had to tables of impairment contained in a publication "Guides to the Evaluation of Permanent Impairment" prepared by a Committee of the American Medical Association.

Clause 36: Increased rate of benefit in respect of a permanent partial incapacity in certain cases

Clause 36 provides that the Secretary may increase the weekly rate of benefit payable in respect of

permanent partial incapacity where he considers the rate determined is less than it fairly should be. This applies even though the percentage incapacity certified by a medical practitioner is less than 10 per centum. The increased rate of benefit determined by the Secretary is not to exceed the rate payable for total incapacity.

Clause 37: Appeals from certificates of medical practitioners

This clause provides the same right of appeal against a certification given by a medical practitioner as applies to a determination given by the Secretary. The Appeal Tribunal is empowered to direct that hearings take place in private and direct the persons who may attend.

Clause 38: Rate of benefit in respect of temporary partial incapacity

The Secretary may determine a weekly rate of benefit, not exceeding one-half of the person's weekly income, in cases of temporary partial incapacity. This is, in effect, a convalescent allowance payable during a rehabilitative period, aimed at restoring the person to full working life. This benefit is payable for a period of 26 weeks and the Secretary is empowered to extend it for a further period not exceeding 1 year. Provision is also made for the Secretary to determine that the temporary incapacity has become permanent, in which case benefits are payable as provided for permanent incapacity.

Clause 39: Rate of benefit in respect of total incapacity

This clause provides the rate of benefit payable to an incapacitated person where the Secretary has determined that the incapacity is total. It provides two methods of calculation, one for the first four weeks of incapacity and the second for any longer period or where the incapacity commenced more than five weeks before the date proclaimed for the

commencement of stage 2. In each category the rate of benefit is 85 per cent of the weekly income of the person calculated as provided in the earlier clauses of the Bill. The clause also provides that the minimum rate of benefit payable shall be calculated on the basis of a weekly income of \$50 before incapacity and that the benefit payable to a full time student shall not exceed the rate calculated on the basis of a weekly income of \$50 until such time as his full time education would have been completed.

Clause 40: Commencement of benefit in certain cases

In respect of a non-earner, that is, a person not receiving income as an employee or a self-employed person in the four weeks prior to commencement of the incapacity, the period which is to elapse from the commencement of incapacity to the day that person becomes eligible for the payment of a benefit is to be 21 days.

Clause 41: Successive benefits

A person who is already receiving a benefit in respect of partial incapacity and becomes entitled to a further benefit for partial incapacity at a higher rate, or for total incapacity, is to receive only the benefit payable at the higher rate. This is based on the premise that the incapacity assessed relates to the incapacity of the whole person and any lower incapacity assessment is incorporated in the higher assessment. Receipt of a children's benefit or a relative's benefit is not affected because the person concerned becomes entitled to another benefit under this Part of the Act.

Division 4 - Death BenefitsClause 42: Funeral benefit

Clause 42 allows payment of an amount, considered by the Secretary to be reasonable, in respect of the funeral expenses of a person who dies after the commencing date of the scheme. Where the funeral expenses have been paid, the amount is payable to the person who paid them, otherwise it is payable to the person who carried out the funeral. In determining what is a reasonable amount, the Secretary is to have regard to the charges customarily made for funerals in the place where the funeral was carried out. Payment of this amount by the Secretary to the person who carried out the funeral discharges the liability of the person otherwise liable to pay the cost.

Clause 43: Childrens' benefit

This clause provides for the payment of weekly benefits to the child of a person who died on or after the commencing date. Generally speaking, this benefit is three-twentieths of that payable to the deceased person had he been totally incapacitated. If both parents have died, the rate payable to the child is doubled. The minimum weekly income which is to be used for the purposes of calculating the benefit payable is set at \$100. Where a person died before the commencing date, the rate of benefit payable to a child is to be \$13 weekly, or \$26 if both parents have died. No benefit is payable where the deceased person is the mother or step-mother of the child unless the child was substantially dependent on the mother or step-mother before her death.

Clause 44: Relatives' benefit

Payment of a benefit is to be made to a relative of the deceased person where that relative is under

65 years of age and was dependent on the deceased person at the date of death. The benefit may be payable either by a lump sum or by weekly payments and, in either case, shall be such amount as the Secretary determines. The criteria to which the Secretary shall have regard in making his determination are set out in sub-clause (3). The benefit to a relative is to be payable either for a period of 1 year, until the relative attains 65 years of age or until the Secretary considers the criteria on which he made his determination no longer apply. A man, although not married to a woman, is deemed to be a relative for the purposes of this section if he had lived with her on a permanent basis for not less than 3 years before she died or from the time the incapacity occurred until her death. The rate of benefit payable to a relative will not be varied in line with changes in the Consumer Price Index.

Clause 45: Childrens' or relatives' benefit not payable to married women

A children's benefit or a relative's benefit is not to be paid to a female who was married at the date the person died or who has married or re-married since the person died.

Division 5 - General

Clause 46: Benefit in respect of expenses and losses

Clause 46 provides that the Secretary shall pay to the incapacitated person or to the legal personal representative of a deceased person, a lump sum payment in respect of reasonable expenses and losses resulting directly from the injury or death. Benefits are payable where a person needs constant or intermittent personal attention. No benefits are

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payable in respect of property damage, loss of opportunity to make a profit, inability to perform a business or professional contract, or where compensation is otherwise payable under the Act.

Clause 47: Disfigurement

A benefit is payable by way of a lump sum up to \$10,000, as the Secretary determines, where a person has suffered severe facial or bodily disfigurement. No benefit is payable where damages have been recovered in respect of the personal injury that caused the disfigurement.

Clause 48: Second injuries

Where the Secretary is satisfied that a person in receipt of a benefit for total incapacity again suffers a personal injury and that incapacity continues beyond the period when benefits for the first injury have ceased, then benefits for the second injury are payable from the day after the cessation of payment of benefits for the earlier incapacity.

Clause 49: Change in nature of incapacity

Where benefits are payable in respect of incapacity and the Secretary determines that a partial incapacity has become total incapacity, or total incapacity has become partial incapacity, benefits in respect of the new degree of incapacity are payable from the date of determination at the rate applicable to the new determination.

Clause 50: Commutation of benefits

Where the Secretary determines that a beneficiary's incapacity is not likely to become total, Clause 50 provides for commutation of benefits payable for permanent partial incapacities but, where the commuted sum would be in excess of \$3,000 commutation is allowed only where the beneficiary intends to use the lump sum in an advantageous manner, and

commutation is desirable in the beneficiary's interests.

PART VI - WIDOWS PENSIONS

This Part provides benefits for widows and children of deceased persons.

Clause 51: Interpretation

This clause defines "child" and places widows in two categories. A Class A means a widow (but not a widower) who had dependants, is pregnant, unemployable or who became widowed after attaining the age of 55 years. A Class B widow includes widows not in the Class A category. A woman employed in, or conducting a hospital, nursing home, old peoples home or similar institution, shall not be regarded as caring for aged and infirm persons for the purposes of the Bill. A woman who, although not married to a man, lived with him on a permanent and bona fide domestic basis for 3 years immediately preceding his death or from the date of his injury or illness until his death, whichever is the shorter, is deemed to be the widow of that man.

Clause 52: Widows' pensions

Clause 52 provides that pensions under this Part are payable to women up to the age of 65 years who are widows.

Clause 53: Rate of pension where husband dies after commencing date

Where the husband dies after the commencing date, sub-clause (1) provides for a Class A widow a lump sum payment of \$1,000 and a pension at a rate equal to three-fifths of the rate per week of the benefit that was payable to her husband immediately before his death; or if her husband was not in receipt of

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a benefit immediately before his death, the rate that would have been payable to him if he had been totally incapacitated before his death. Where the income of the husband for the purposes of benefit was less than \$100 a week, the rate of benefit payable to a widow shall be based on an income of \$100 a week. The pension payable to a Class A widow ceases on her re-marriage and a re-marriage benefit is payable by way of a lump sum payment equal to the amount of pension paid to her during the previous year or since the death of her husband whichever is the shorter. A Class B widow, widowed after the commencing date, is eligible for a lump sum of \$1,000, and a pension for a period of 1 year or until her re-marriage whichever first happens. Where a Class A widow becomes a Class B widow or a Class B widow becomes a Class A widow, she is not entitled to a further lump sum payment of \$1,000.

Clause 54: Rate of pension where husband dies before commencing date

This clause provides a pension at the rate of \$50 a week to a Class A widow whose husband died before the commencing date and lays down that such a pension will cease on the widow's re-marriage. On re-marriage, a benefit is to be paid by way of a lump-sum payment equal to the amount of pension paid to her during the previous year or since the death of her husband whichever is the less. A Class B widow whose husband died within one year prior to the commencing date is to be paid a pension at the rate of \$50 a week for a period of one year or until her re-marriage whichever is the earlier.

Clause 55: Rate of pension where husband who dies after commencing date is survived by several widows

This clause provides that, where a husband who dies

after the commencing date is survived by more than one widow eligible under this Part, the lump-sum payment of \$1,000 is payable to each widow. The rate of pension payable to each widow will take into consideration the extent to which the widow was dependent on the deceased person prior to his death and to any loss suffered by her in consequence of his death. The total amount that can be paid to the widows in respect of his death is restricted to the amount that would be payable to a Class A widow. The minimum payment to each widow however, will be \$50 a week. A pension payable under this clause is payable to a Class A widow until her re-marriage and to a Class B widow until she re-marries or until the expiration of 1 year after the death of her husband whichever first happens. Where pension ceases to be payable under this clause to a widow, pension for the remaining widows will be re-assessed. Where a pension previously paid under this clause again becomes payable by reason of the operation of any provision of the Bill, the rate of pension of that widow and to the other widow or widows shall be re-calculated.

Clause 56: Rate of pension where husband who died before commencing date is survived by several widows

A pension of \$50 a week is paid to each surviving widow where a husband who died before the commencing date is survived by more than one eligible widow. A pension will be payable until the widow re-marries or, in the case of a Class B widow, until the expiration of 1 year after the death of her husband, whichever first happens.

Clause 57: Limitation of widows' pensions and children's benefits

The total amount payable by way of widows' pensions

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and children's benefits in respect of a deceased person is limited to the amount that would have been payable to the deceased person if he had been totally incapacitated and had not died.

Clause 58: Continuance of widows' pensions in certain cases

A person entitled to pension under this Part is not disqualified from receiving the pension solely by virtue of the fact that she is also entitled in her own right to benefit in respect of personal injury. A Class A widow will retain her eligibility if, after she has attained the age of 55 years, the qualifying provisions which allowed her to remain a Class A widow cease to apply.

PART VII - CLAIMS FOR BENEFIT

Clause 59: Claims for benefit to be lodged

This clause requires a person to lodge a claim in writing before a benefit is payable.

Clause 60: Claim made by lodgement of medical certificate

Lodgement of a medical practitioner's certificate setting out the name of the incapacitated person and particulars of his personal injury or sickness and incapacity, is deemed to be lodgement of a claim for benefit.

Clause 61: Investigation of claims

The Secretary is to investigate a claim in whatever way he thinks appropriate.

Clause 62: Applicants to be informed of proposed decisions

The Secretary must inform the applicant of the decision he intends to make on the information available to him and of the fact that the applicant may request the Secretary to reconsider the claim. Provision is also made for the Secretary, of his own volition, to reconsider the claim and in these cases he must again follow the procedure of advising

the applicant of the decision he proposes to make. The Secretary may proceed to make a decision, in accordance with the advice he has given to the applicant, if the applicant does not make a request for reconsideration.

Clause 63: Reconsideration of claims

An applicant, who has been informed by the Secretary of a proposed decision, may request the Secretary within a period of 1 month to reconsider the proposed decision and may give reasons in support of the request. The applicant is permitted to be heard in person, or by a person acting on his behalf, if he so desires, and may also furnish further information. The Secretary, in such cases, must further consider the application before making a decision.

Clause 64: Applicants to be informed of decisions

The Secretary is to inform the applicant in writing of his decision on the claim. Where the decision is not wholly in favour of the applicant, he is to be given the reasons for the decision and informed of his right of appeal to an Appeal Tribunal.

Clause 65: Claims to be determined without formality

The Secretary is required to deal with a claim with as little formality and technicality and with as much expedition as possible, consistent with a proper consideration of the case.

PART VIII - APPEALS

Clause 66: Appeal Tribunals

The Minister may establish Appeal Tribunals as he considers necessary. The members of each Tribunal are to be a barrister or solicitor of not less than 5 years' standing and two other members. All members will be appointed by the Governor-General and the barrister or solicitor is to be the Chairman of the Tribunal.

Clause 67: Outside employment

A member is not to engage in paid employment outside the duties of his office with the Tribunal unless the Minister agrees. For the purposes of the Superannuation Act 1922-1973 a member is deemed to be required to give the whole of his time to the duties of his office as a member of the Tribunal.

Clause 68: Period of appointment

A member of a Tribunal is to be appointed for a fixed period, not to exceed 5 years, and, having regard to other provisions of the Act, is to be eligible for re-appointment. Terms and conditions relating to the holding of office by a member which are not provided for in the Act are to be subject to determination by the Governor-General.

Clause 69: Rights of public servants appointed as members

The normal provision to ensure continuity of rights where a person appointed as a member of a Tribunal was, up to the time of his appointment, an officer of the Australian Public Service or a person to whom the provisions of the Officers' Rights Declaration Act 1928-1973 is to apply. The effect of this clause is to allow the member to retain any benefits in the nature of leave, superannuation etc. which have accrued to him and for those benefits to continue to accrue while he is a member of the Tribunal.

Clause 70: Remuneration and allowances

Tribunal members will be paid such remuneration as is determined by the Remuneration Tribunal but, until the Tribunal makes a determination, remuneration and allowances will be prescribed. The Minister may grant to a member leave of absence on such terms and conditions as the remuneration or otherwise as the Minister determines.

Clause 71: Resignation of member

A member of a Tribunal may resign his office.

Clause 72: Retirement from office

Where a member consents, the Governor-General may retire a member from office on the ground of invalidity.

Clause 73: Suspension and removal from office

The Governor-General may suspend a member from office on the ground of misbehaviour, or physical or mental disability. The Minister must, within 7 sitting days of the suspension, table in each House of the Parliament a statement on the ground of suspension. A House of the Parliament may, within 15 sitting days of the tabling of the statement, pass a resolution declaring that the member should be restored to office. If each House passes such a resolution, the Governor-General must terminate the suspension. If no such resolution is carried, the Governor-General may remove the member from office. The Governor-General must remove from office a member who becomes bankrupt, applies to take the benefit of any law for the relief of a bankrupt or compounds with his creditors or makes an assignment of his remuneration for their benefit. A member cannot be removed from office except as provided by this clause. A member who is contributing to the superannuation fund under the Superannuation Act 1922-1973 and who is removed from office on the ground of physical or mental disability is deemed, for the purposes of that Act, to have retired on the ground of invalidity on the day of his suspension from office. Any member suspended from office under this clause is not entitled to be paid any remuneration or allowances in respect of the period of suspension, unless he is restored to office.

Clause 74: Acting appointments

The Minister may appoint a person to act as a member of a Tribunal where a member is absent from duty or suspended, or the number of members of that Tribunal falls below three. Such person appointed to act as a member of a Tribunal cannot act as such after the expiration of one year from the date of appointment. The Minister may appoint a member of a Tribunal to act as Chairman during the absence or suspension of any member, or until the filling of a vacancy, and may at any time terminate an appointment. A person appointed in an acting capacity under this clause holds office on such terms and conditions as the Minister determines. The validity of any decision by an Appeal Tribunal cannot be questioned on the ground that an appointment under this clause had ceased to have effect or that the occasion for the appointment of a person under this clause had not arisen.

Clause 75: Members not to act when interested

Where a member has a direct or indirect pecuniary interest in a matter, he cannot exercise a power under this Act in respect of that matter.

Clause 76: Meetings of Tribunals

The Chairman of an Appeal Tribunal will convene meetings of the Tribunal. Meetings of an Appeal Tribunal will be held at such places as the Chairman determines and the Chairman will preside at all meetings. Each Tribunal must keep a record of its proceedings and the Chairman may give directions as to the procedure to be followed. A quorum for a meeting of an Appeal Tribunal will consist of the Chairman and one other member. All questions will be decided according to the opinion of a majority of the members present.

Clause 77: Appeals

Where an applicant is aggrieved by a decision of the Secretary under clauses 62 or 63, he may lodge an appeal against the whole or a part of the decision. An application will be lodged with the Secretary, who will forward it to an appropriate Appeal Tribunal. The Tribunal will consider the appeal and give the applicant an opportunity of being heard in person or by a person acting on his behalf. The Appeal Tribunal may extend the time for lodgement of an appeal. Notice of the Tribunal's decision and reasons for that decision, including findings on material questions of fact, will be given to the Secretary and to the applicant and the Secretary is required to give effect to that decision as though it were his determination.

Clause 78: Procedure of Tribunal

Proceedings of an Appeal Tribunal are to be conducted with as little formality and technicality and with as much expedition as the requirements of the legislation and an appropriate consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence.

Clause 79: Proceedings to be in public

Proceedings before an Appeal Tribunal are to be in public except where the Tribunal is satisfied that the confidential nature of any evidence or material before it would make it more desirable that the proceedings take place in private.

Clause 80: Powers of Tribunal

An Appeal Tribunal may, in making determinations, exercise all the powers of the Secretary.

Clause 81: Evidence

An Appeal Tribunal may take evidence on oath or affirmation; proceed in the absence of a party where reasonable notice has been given; adjourn proceedings; summon persons to appear and give evidence and produce documents; and, subject to the legislation, give directions for the purposes of an appeal.

Clause 82: Protection of Tribunals, representatives and witnesses

Members of an Appeal Tribunal will have, in the performance of the duties of their office, the same protection and immunity as a Justice of the High Court. A party or his representative appearing before a Tribunal has the same protection and immunity as a barrister has in appearing before the High Court. A witness or person summoned to appear before the Appeal Tribunal has the same protection and is subject to the same liabilities as a witness before the High Court.

Clause 83: Disobedience to summons, etc.

A witness before a Tribunal must not, without lawful excuse, fail to appear when summoned or to produce a document or article. A witness cannot refuse or fail to make an oath or affirmation, answer questions or produce a document or article as required. Failure or refusal will be subject to a penalty of \$1,000 or imprisonment for three months.

Clause 84: Fees for witnesses

Where a witness is summoned at the request of a person other than the Secretary, that person is to pay to the witness the prescribed fee. In any other case the prescribed fee for witnesses is to be paid by the Secretary.

Clause 85: Offences in relation to Tribunal

A person is not to do any act or thing that would constitute contempt of court if an Appeal Tribunal were a court of record. To insult or disturb a member of an Appeal Tribunal in the exercise of his functions, interrupt proceedings, use insulting language, create a disturbance, contravene or fail to comply with the direction of an Appeal Tribunal or any such act which would constitute contempt is to be subject to a penalty of \$1,000 or imprisonment for three months.

Clause 86: Appeal to Court

The Secretary or an applicant may appeal to the Superior Court of Australia from a decision of an Appeal Tribunal, if it involves a question of law. Such appeal is to be heard and determined by a single Judge of the Court and the applicant and the Secretary are to be parties to the appeal. The Court may demand further evidence and may confirm, reverse or modify the decision appealed against and may give such judgement or make such order as it thinks fit or may refuse to make an order. The decision of the Court is final and conclusive and the Court may order a party to pay costs to the other party.

PART IX - VARIATION OF BENEFITSClause 87: Interpretation

This clause defines the Consumer Price Index to mean the all groups index number for the weighted average of the six State capitals. If the Statistician corrects a published figure for the Consumer Price Index or Average Weekly Earnings, the first published figure is to be used in updating benefits and income levels, to avoid unduly varying benefits being paid. The correction would be picked up in the next adjustment. The clause also allows continued use

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of the Consumer Price Index, even though the reference base for its compilation is altered by the Statistician.

Clause 88: Variation of benefits

This section provides for each periodical rate of benefit being paid to be adjusted quarterly in accordance with formula set out in the provisions of the clause. The formula is based on quarterly movements in the Consumer Price Index with an added component representing an increase of 1 per cent per annum in national productivity. Sub-clause (1) formulates the rate of increase where the Consumer Price Index for the current quarter is higher than the Consumer Price Index for the previous quarter. The increase is to have effect from the first day of the second month of the quarter. Where the Consumer Price Index for the current quarter does not show a rise, the amount of the increase in benefit will be 0.25 percent from the first day of the second month of the quarter. Where the Bill provides a benefit expressed as a specific amount in dollars, that rate will be increased each quarter after the date of commencement of the Act in accordance with the formula set out in sub-clause (1).

Clause 89: Variation of maximum and minimum weekly income

This clause provides that if, in respect of a March quarter, the Average Weekly Earnings in respect of that quarter is greater than the Average Weekly Earnings of the last preceding March quarter, the minimum and maximum income figures of \$50 and \$500 a week will be increased in accordance with formula set out in sub-clause (1), or by 1 percent, whichever is the greater. Where the Average Weekly Earnings in respect of a March quarter do not show an increase over the Average Weekly Earnings for the last preceding

March quarter, the minimum and maximum income figures will be increased by 1 percent.

PART X - MISCELLANEOUS

Clause 90: Interpretation

This clause provides that a reference in clauses 91 and 92(1) to a cause of action, claim, demand, damages or liability includes such action in respect of loss of services or of consortium, but does not include such action in respect of injury to property or in respect of a breach of a contract of insurance.

Clause 91: Benefits to be in substitution for other claims

A benefit under this Bill in respect of incapacity or death as a result of personal injury or sickness is to be in substitution for any damages recoverable or payable in respect of that injury or sickness, whatever the cause of action or basis of liability. This extends to a benefit that is not being paid by reason only that a claim for it has not been lodged. This clause does not apply to damages under the Civil Aviation (Carrier's Liability) Act 1959-1973 or the Civil Aviation (Damages by Aircraft) Act 1958-1973.

Clause 92: Secretary may require certain amounts to be paid to Australia

Where a person has received a benefit in respect of incapacity or death as the result of personal injury or sickness, the Secretary may require a person in receipt of such amounts to pay the whole or part of any such sum to Australia. Where a benefit is being paid in respect of incapacity or death as a result of personal injury and the whole or part of a sum of money received by some person other than the beneficiary is by way of damages in an action for loss of services or loss of consortium, the

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Secretary may require that person to pay to Australia an amount specified and must cancel payment of the benefit. Any such amount that a person is liable to pay to Australia is a debt due by that person to Australia. The Secretary before cancelling any benefit must inform the beneficiary in writing of the decision that it is proposed to make.

Clause 93: Persons not to be disadvantaged by non-insurance

A person must not be disadvantaged by reason only of the fact that he has not effected any insurance in respect of personal injury or death required by a State or internal Territory. This would prevent a State or internal Territory refusing to issue a licence or other instrument by reason of the refusal of a person to effect such insurance.

Clause 94: Benefits payable weekly

Payments other than lump-sum payments are to be paid by weekly instalments on such days as are determined by the Secretary. In calculation of the benefit payable for a period less than a week, the rate to be used for each day is one-sixth of the weekly rate. This rate is payable for each day other than a Sunday.

Clause 95: Statements to be furnished when required

A beneficiary is required to furnish a written statement to the Secretary, whenever required, in a form required, relating to a specified matter which bears on the application of the Bill to the beneficiary.

Clause 96: Taking evidence, etc.

The Secretary, when carrying out the provisions of the Act, may summon witnesses, take evidence on affirmation or oath and require production of documents. Where tender of reasonable expenses has been made, a person who does not, without lawful

excuse, obey a summons or produce documents, will be liable to a penalty of \$200. A statement or disclosure to the Secretary by a witness will not be admissible against a witness in any civil or criminal proceedings unless it relates to an offence under clause 100 of the Bill.

Clause 97: Officers to observe secrecy

An officer, if directed to do so by the Minister or the Secretary, is to make a declaration before a Justice of the Peace or a Commissioner for Declarations before commencing duties. A person, whether while an officer or after he ceases to be an officer, is not to make a record of nor disclose to any person details of the affairs of another person, unless it is necessary for him to do so in the performance of his duties. Provision is also made that an officer cannot be required to produce a document to a Court or divulge information to a Court on a matter that has come under his notice in carrying out his duties under the legislation. Disclosure of information will be permitted, however, where the Minister or Secretary certifies it is in the public interest to do so, where an authority or person has been prescribed to receive such information or where the person to whom the information relates has directly or impliedly authorised another person to receive it. Persons or authorities entitled to receive information under this clause, will be placed in the same position regarding the need to keep the information confidential as an officer.

Clause 98: Review of benefits

The Secretary is to inform the beneficiary that, as a result of information in his possession, or circumstances known to him, or the failure of the beneficiary to meet provisions of the legislation,

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he proposes to cancel, suspend or vary the rate of benefit. In the case of permanent partial or permanent total incapacity, the Secretary will not be permitted to reduce the rate of benefit where the percentage of incapacity decreases nor cancel the benefit where the incapacity has come to an end. The beneficiary may request the Secretary to review any matter relating to the benefit and he must then be informed of the decision the Secretary proposes to make.

Clause 99: Return of beneficiaries to Australia

The Secretary may arrange for the return of a person and any member of his family to Australia at the expense of Australia where a benefit is payable to that person outside Australia.

Clause 100: Offences

A person is prohibited from making a false or misleading statement, in connection with a claim, or doing anything to affect the rate of a benefit, or deceiving an officer doing his duty in relation to the legislation. Neither shall a person obtain payment of a benefit where none is payable, whether by means of a false or misleading statement, impersonation or a fraudulent device. For any such offence he will be liable to a penalty of \$1,000 or imprisonment for six months. Two or more charges may be joined together in the same complaint and be tried together, unless the Court deems it just that any charge should be tried separately. Where a person is convicted of more than one offence under this clause, the Court may inflict a penalty in respect of the offences of which he has been convicted but that penalty must not exceed the sum of the maximum penalties that could be imposed for the individual offences. The Court may also order such a person

to pay to Australia an amount equal to any amount payable by way of benefit as a result of fraud. The certificate of an officer as to the amount of benefit so paid will be prima facie evidence of the matters specified in such certificate.

Clause 101: Defence in certain prosecutions

It will be a defence against a charge of making a false or misleading statement if the person charged shows that he did not know and had no reason to suspect that any statement or document was false or misleading.

Clause 102: Prosecutions for offences

There is a limitation period of three years for the commencement of proceedings for an offence against this Bill. Any such offence is not to be prosecuted without the written consent of the Minister, the Secretary or a person authorised in writing by the Secretary to consent to such prosecutions.

Clause 103: Recovery of over-payments

Overpayments of benefits under the legislation will be recoverable in a court of competent jurisdiction as a debt due to Australia from the person to whom or on whose account the amount was paid.

Clause 104: Information as to benefits

The Secretary will be empowered to require information as to benefits paid to a person and may serve notice in writing by post upon such a person requesting a confidential report of such matters. Failure to furnish a report accordingly within 14 days or the giving of false or misleading particulars will be subject to a penalty of \$200.

Clause 105: Indemnity to certain persons

There will be an indemnity against any law of a State or internal Territory which might prevent a person furnishing information or making books, documents or papers available to the Secretary.

Clause 106: Benefits to be absolutely inalienable

Benefits under the Bill will be absolutely inalienable whether by way of sale, assignment, charge, execution, bankruptcy or otherwise.

Clause 107: Payment of benefits to other persons

The Secretary will be empowered to determine that benefits should be paid to a person on behalf of a beneficiary. Where a beneficiary has not attained the qualifying age and benefits are paid to a person on behalf of the beneficiary, that person will be required to apply the monies so paid for the maintenance, training or advancement of the beneficiary.

Clause 108: Payment of benefits where beneficiary imprisoned, etc.

The Secretary may suspend, postpone or cancel benefits or pay benefits to a person dependent on the beneficiary where a beneficiary becomes imprisoned following conviction for an offence or becomes an inmate of a hospital, nursing home or benevolent institution. While this Bill extends to and in relation to incapacity occurring to a person while imprisoned or an inmate of a hospital or institution, no benefit will be payable during any period in which the person is imprisoned. In deciding whether to suspend, postpone or cancel benefits or pay such benefit to another person, the Secretary is to take into account all the circumstances including the extent to which the beneficiary is entitled to payment of a benefit under a law of Australia relating to hospital benefits, and whether charges made to inmates of the hospital, nursing home or benevolent institution are reduced

by reason of grants made to such institutions by Australia or a State. Before taking action under this clause the Secretary must inform the beneficiary or some appropriate person of the decision that he proposes to make.

Clause 109: References to payment of benefits

References to payment of benefits to a person are to be taken to be synonymous with references to the payment of a benefit to a person on behalf of the beneficiary.

Clause 110: Cancellation, etc., of benefits in certain cases

The Secretary may suspend, postpone or cancel payment of a benefit where the beneficiary refuses or fails to supply a medical certificate that is required, attend a medical examination, or take action, considered reasonable by the Secretary, that would terminate or reduce his incapacity. The Secretary must inform the beneficiary in writing before taking this action and the beneficiary will have the same rights, to submit evidence, to discuss the action with an officer of the department and to appeal, as he does in the case of a new application.

Clause 111: Payment of benefit on death of beneficiary

A benefit unpaid at death is to be paid to the person the Secretary determines is best entitled to receive it. An application must be lodged within 6 months of the date of death but the Secretary has the power to extend this period.

Clause 112: Benefits payable out of Consolidated Revenue

Fund

Benefits payable under the legislation are to be paid out of the Consolidated Revenue Fund.

Clause 113: Annual report

The Secretary is to submit to the Minister an Annual Report and the Minister is to table that report in each House of the Parliament.

Clause 114: Regulations

Clause 114 provides for the making of regulations and for the prescribing of penalties not exceeding a fine of \$200 or imprisonment for a period not exceeding 6 months for offences against the regulations.

SCHEDULE

The Schedule is based on the E category of the International Classification of Diseases and incorporates nos. E800 to E999 with the exception of no. E978 (legal execution). It provides a wide scope for the classification of cause of injury and the demarcation of injury from sickness.

Clause 8 defines personal injury as physical or mental injury or other physical or mental damage or effect that is caused by an occurrence in or caused in circumstances specified in the Schedule.