

1992-01-01

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

SEAFARERS REHABILITATION AND COMPENSATION BILL 1992

SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE

1. Clause 97, page 93, subsection (1) line 33, after "31,000,000" substitute "the prescribed amount".

2. Clause 97, page 93, after subsection (1), insert the following subsection:
(1A) Before advising the Governor-General about the making of a regulation prescribing an amount for this section the Minister must consult the Port and such organisations which represent employers or employees in the maritime industry as appropriate.
(1B) A failure to consult as required by subsection (1A) does not affect the validity of a regulation prescribing an amount for the purposes of this section."

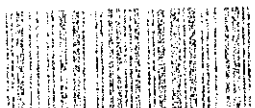
HARRY EVANS

Chief of the Senate

The Senate

Canberra, 17 December 1992

Printed by Authority of the Commonwealth Government Printer



9 280004 58025

51111521 112610101992 COW NO 02 0871

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SEAFARERS REHABILITATION AND COMPENSATION BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and
Communications, Senator the Hon. Bob Collins)



9 780644 419284

36090/92 Cat. No. 92 5170 5

INDEX

GENERAL OUTLINE

FINANCIAL IMPACT STATEMENT

Clause

PART 1 - PRELIMINARY

Division 1 - Short title and commencement

Short title	1
Commencement	2

Division 2 - Definitions

General definitions	3
Employees	4
Employees lost at sea	5
Injuries suffered by employees	6
Injuries etc. resulting from medical treatment	7
Incapacity for work	8
Injury arising out of, or in the course of, employment	9
Provisions relating to diseases	10
Hearing impairment - time when suffered	11
Serious and wilful misconduct	12
Normal weekly earnings	13
Recovery of damages	14
Persons who are wholly or partly dependent	15
Ex-nuptial and adoptive relationships	16
Persons caring for prescribed children	17

Division 3 - Miscellaneous preliminary provisions

Extent of Act	18
Application of Act	19
Act not to apply to CERC Act employees	20
Act binds Crown etc.	21
Amounts of compensation	22
Indexation	23
Liability to pay compensation	24
Compensation to be paid in full	25

PART 2 - COMPENSATION

Division 1 - Injuries, property loss or damage, medical expenses

Compensation for injuries	26
Compensation for property loss or damage	27
Compensation for medical and related expenses	28

Division 2 - Injuries resulting in death

Compensation for injuries resulting in death	29
Compensation in respect of funeral expenses	30

Division 3 - Injuries resulting in incapacity for work

Compensation for injuries resulting in incapacity	31
Determination of suitable employment	32
Compensation for injuries resulting in incapacity where employee is in receipt of a superannuation pension	33

Compensation for injuries resulting in incapacity where employee is in receipt of a lump sum benefit	34
--	----

Compensation for injuries resulting in incapacity where employee rolled-over part of a lump sum benefit	35
---	----

Compensation for injuries resulting in incapacity where the employee rolled-over the whole of a lump sum benefit	36
--	----

Compensation where employee is maintained in a hospital	37
---	----

Compensation for incapacity not payable in certain cases	38
--	----

Division 4 - Injuries resulting in permanent impairment

Compensation for injuries resulting in permanent impairment	39
---	----

Interim payment of compensation	40
---------------------------------	----

Compensation for non-economic loss	41
------------------------------------	----

Approved Guide	42
----------------	----

Division 5 - Household and attendant care services

Compensation for household services and attendant care services	43
---	----

Division 6 - Miscellaneous

Redemption of compensation	44
----------------------------	----

Recurrent payments after payment of lump sum	45
--	----

Cancelled determinations not to affect certain payments of compensation	46
---	----

Reduction of compensation in certain cases	47
--	----

PART 3 - REHABILITATION

Approved rehabilitation program providers	48
Assessment of capability of undertaking rehabilitation program	49
Provision of rehabilitation programs	50
Compensation payable in respect of certain alterations etc.	51
Duty to provide suitable employment	52

PART 4 - LIABILITIES ARISING APART FROM THIS ACT

Interpretation	53
Employee not to have right to bring action for damages against employer etc. in certain cases	54
Actions for damages - election by employees	55
Notice of proceedings against third party	56
Notice of proceedings against employer	57
Compensation not payable if damages recovered	58
Proceedings against third parties	59
Payment of damages by persons to employer	60
Compensation not payable both under Act and under award	61

PART 5 - NOTICES AND CLAIMS

Notice of injury or loss of, or damage to, property	62
Claims for compensation	63
Survival of claims	64
Claims may not be made in certain cases	65
Power to require medical examination	66

Power to request the provision of information relevant to claim	67
Certain documents to be supplied on request	68
Neither section 67 nor 68 to affect legal professional privilege	69
Legal professional privilege not to apply to medical reports	70
Bankruptcy etc. of actual employer	71
Time limit for determining claims relating to the death of an employee	72
Time limit for determining liability for claims relating to injuries to employees other than injuries resulting in death	73
Employer may seek review of Authority's decision	74
Sections 72 to 74 (inclusive) not to apply to Authority if declaration made under section 100	75

PART 6 - RECONSIDERATION OF DETERMINATIONS AND REVIEW OF DECISIONS BY THE ADMINISTRATIVE APPEALS TRIBUNAL

Division 1 - Definitions

Interpretation	76
----------------	----

Division 2 - Reconsideration of determinations by employers

Determinations to be notified in writing	77
Reconsiderations of determinations	78
Time limit for reconsideration of determinations	79
Employer may seek review of Authority's decision	80
Sections 79 and 80 not to apply to Authority if declaration made under section 100	81
Industry panel or Comcare to give copy of report to employer to claimant	82

Power to request provision of information relevant to consideration	83
Section 83 not to affect legal professional privilege	84
Legal professional privilege not to apply to medical reports	85
Bankruptcy etc of employer	86
Reviewable decision to be notified in writing	87
Applications to the AAT	88

Division 3 - AAT review of reviewable decisions and extension of time decisions

Modified AAT Act to apply	89
Evidence in proceedings before AAT	90
Costs of proceedings before AAT - general	91
Costs of proceedings before AAT - when costs payable by employer	92

PART 7 - COMPULSORY INSURANCE AND THE FUND

Division 1 - Compulsory insurance

Compulsory insurance	93
Employer to give details of insurance or indemnity arrangement to Authority	94
Authority may require evidence from employer	95

Division 2 - The Fund

The Fund	96
Fund to insure	97
Fund to provide Authority with financial information	98
Minister may revoke approval under section 96	99

Division 3 - Reserve function of Authority

Ministerial declaration	100
Effect of Ministerial declaration	101
Authority to insure if declaration made under section 100	102

PART 8 - ADMINISTRATION AND FINANCE

Division 1 - Seafarers Rehabilitation and Compensation Authority

Establishment	103
Functions	104
Powers	105
Power to obtain information	106
Directions by Minister	107

Division 2 - Constitution and Meetings of Authority

Authority is body corporate	108
Constitution	109
Appointment of members	110
Term of office	111
Deputies of members	112
Persons acting as Chairperson or Deputy Chairperson	113
Remuneration and allowances	114
Leave of absence	115
Disclosure of interests	116
Resignation	117
Termination of appointment	118

Meetings 119

Division 3 - Finance

Application of Division 3 of Part XI of the Audit Act 120

Money of Authority 121

Estimates of receipts and expenditure 122

Exemption from taxation 123

Borrowings 124

Division 4 - Miscellaneous

Delegation by Authority 125

PART 9 - MISCELLANEOUS

Employee to give information about prior employers 126

Determinations to be in writing 127

Shared liability 128

Subrogation of rights of actual employer to Fund 129

Payment of compensation 130

Employee to notify other employers that compensation has been paid 131

Recovery of compensation payments 132

Money paid for benefit of person 133

Provisions applicable on death of beneficiary 134

Assignment, set-off or attachment of compensation 135

Recovery of overpayments 136

Employees on compensation leave 137

Double benefits 138

Compensation where State compensation payable 139

Notice of departure from Australia etc. 140

Comcare may charge for officer's services provided to employer 141

Disallowable instruments 142

Regulations 143

SEAFARERS REHABILITATION AND COMPENSATION BILL 1992

GENERAL OUTLINE

The proposed Seafarers Rehabilitation and Compensation Act 1992 is intended to replace the Seamen's Compensation Act 1911 and establish a new system of compensation for seafarers who are injured in the course of their employment in the maritime industry.

The proposed Seafarers Rehabilitation and Compensation Act 1992 implements the Government's decision to reform seafarers compensation along the lines of the Commonwealth Employees' Rehabilitation and Compensation Act 1988. The decision was based on the recommendations of Professor Harold Luntz in the Review of Seamen's Compensation. The Review was tabled in Parliament in 1988.

Part 1 of the Bill sets out the definitions of principal terms used throughout the Bill and explains the basic concepts on which eligibility for payments would be based. Generally, the definitions are consistent with those in the Commonwealth Employees' Rehabilitation and Compensation Act 1988. Additionally, there are a number of definitions relating to the maritime industry.

Part 1 also specifies which persons will be covered by the new scheme, introduces tests of entitlement and sets out how an employee's normal weekly earnings will be assessed.

Part 2 provides for compensation for medical expenses, weekly benefits for loss of earning capacity and damage to property. It also provides for benefits to be payable by employers on the death of an employee or for a permanent impairment to an employee, resulting from an injury.

The rehabilitation provisions in Part 3 require an employer, in consultation with an injured employee, to arrange for the assessment of the employee's rehabilitation needs and the provision of a suitable rehabilitation program. An employer will be required to take all reasonable steps to assist in the finding of suitable employment for an employee who is undertaking, or who has completed, a rehabilitation program.

Part 4 limits the circumstances in which an employee will be able to initiate proceedings for damages against an employer or fellow employees for injuries arising out of employment.

This Part also allows the employer to institute or take over proceedings against a third party.

Part 5 sets out the requirements relating to claims for compensation.

Part 6 sets out the provisions relating to the reconsideration and review of disputed determinations.

If an employee is dissatisfied with an employer's determination, the employee will be able to require the employer to reconsider the determination. In reconsidering its determination the employer will be required to obtain independent advice, either from an officer of Comcare or through an industry panel established through a certified agreement between employers and maritime unions.

If an employee is dissatisfied with a reconsidered determination, the employee will be able to apply to the Administrative Appeals Tribunal (AAT) for a review of the employer's determination after the reconsideration process.

Part 7 requires employers to be insured with an insurer authorised under the Insurance Act 1973 or be indemnified by a protection and indemnity association which is a member of the International Group of Protection and Indemnity Associations.

The Minister has the power to approve a corporate body (called the Fund) to be the "employer" of persons attending certain industry training courses and seafarers attending Seafarers Engagement Centres as part of industry employment arrangements. Additionally, the approved Fund would operate as the "nominal insurer" of the affected employees should an employer default on its liabilities to pay compensation because of bankruptcy etc.

This Part also provides that if the Minister does not approve a Fund, or the Minister revokes the approval of a Fund, the Seafarers Rehabilitation and Compensation Authority will have the Fund's functions.

Part 8 establishes the Seafarers Rehabilitation and Compensation Authority and sets out its constitution, functions, powers and financial responsibilities.

Part 9 of the Bill contains Miscellaneous Provisions.

FINANCIAL IMPACT STATEMENT

The financial impact of the proposed Seafarers Rehabilitation and Compensation Act 1992 can be broken into three elements:

- . the cost to shipping industry employers;
- . the cost to Government of the day-to-day running of the Seafarers Rehabilitation and Compensation Authority; and
- . the cost to Government if the Authority has to assume the corporate body Fund's employer responsibilities.

Costs to shipping industry employers

No precise figures are available of the costs to shipping industry employers of compensation benefits paid under the Seamen's Compensation Act 1911, as currently there is no central or uniform industry system of accounting for compensation payments. The 1991 Annual Report of the Australian National Maritime Association estimated that workers compensation costs could amount to 6% of the wages bill.

Workers compensation costs for seafarers working in the offshore petroleum sector are not included in these figures but have been separately estimated by the Australian Mines and Metals Association at some 8% of the payroll.

The Bill introduces significantly increased levels of benefits for injured seafarers and their dependants when compared to the benefits under the Seamen's Compensation Act 1911. However, the rehabilitation measures proposed under the Bill, together with the limitations placed on access to common law actions, will go a long way towards offsetting these increased costs.

Indeed, Comcare has achieved overall cost savings under the Commonwealth Employees' Rehabilitation and Compensation Act 1988 (CERC Act), compared with the Compensation (Commonwealth Government Employees) Act 1971. Significant improvements in early return to work rates have been achieved and the number of incapacity cases lasting beyond four weeks has been halved, attributed largely to the introduction of comprehensive case management rehabilitation programs.

Shipping industry employers will have similar opportunities to make significant savings in the benefits paid under the proposed Act.

The costs of the services of Comcare, or the alternative industry panel, to assist in the reconsideration of a disputed determination will be met by the relevant employer.

Costs to Government of operating the Seafarers Rehabilitation and Compensation Authority

The cost to Government of the new arrangements will be limited to the remuneration payable to the Chairperson and Deputy Chairperson of the Seafarers Rehabilitation and Compensation Authority, the travel costs associated with attendance at meetings of the Authority and the provision of administrative support to the Authority by the Department of Transport and Communications. These costs will amount to an estimated \$150,000 per annum and will be absorbed within the existing appropriations of the Department of Transport and Communications.

Costs of operating the Seafarers Rehabilitation and Compensation Authority if it takes over the Fund's employer functions

Should the Authority be required to assume the functions of the Fund, all liabilities and administrative overheads will be recovered from the industry through a levy on employers, based on each individual employer's number of employees covered by the arrangements.

SEAFARERS REHABILITATION AND COMPENSATION BILL 1992

PART 1 - PRELIMINARY

Division 1 - Short title and commencement

Clause 1: Short title

This clause provides that the proposed Act may be cited as the Seafarers Rehabilitation and Compensation Act 1992.

Clause 2: Commencement

This clause provides for the date of commencement of the clauses in the proposed Act.

Clauses 1, 2, 3 and Part 8 will come into operation on the day on which the proposed Act receives Royal Assent.

The remaining provisions of the proposed Act will come into operation on a day or days to be fixed by Proclamation. However, if there are any provisions that have not commenced within the period of six months after Royal Assent, those provisions will commence on the day following that period.

Division 2 - Definitions

Clause 3: General definitions

Clause 3 contains the principal definitions of terms used in the proposed Act. Important terms defined in this clause include:

"attendant care services" which is defined to mean services (other than household services, medical or surgical services or nursing care) that are required for the essential and regular personal care of the employee. These services would include bathing, grooming, assistance with eating and drinking, preparing and caring for artificial aids and appliances and helping with exercise.

"compensation leave" which is defined to mean any period during which an employee is absent from work as a result of an incapacity for which compensation is payable.

"default event" which is defined to mean any circumstances through which an employer is unable to meet its responsibilities and liabilities under the proposed Act, eg. through bankruptcy or insolvency.

"disease" which is defined to mean any physical or mental ailment, disorder, defect or morbid condition, whether of sudden onset or gradual development, suffered by an employee, the contraction, aggravation, acceleration or recurrence of which was contributed to in a material degree by the employee's employment.

"household services" which is defined to mean services of a domestic nature, such as cooking, house cleaning, laundry and gardening services that are required for the proper running and maintenance of an employee's household.

"impairment" which is defined to mean the loss, the loss of the use, or the damage or malfunction, of any part of the body or of the whole or part of any bodily system or function.

"injury" which is defined to mean a disease or injury arising out of or in the course of employment, being a physical or mental injury or the aggravation, acceleration or recurrence of such an injury. The definition of "injury" excludes the ill-effects of disciplinary action taken against the employee or the ill-effects of the failure of the employee to obtain a promotion, transfer or other employment-related benefit.

"non-economic loss" which is defined to mean, in relation to an employee who has suffered an injury resulting in an impairment, a loss or damage of a non-economic nature (including pain and suffering, a loss of expectation of life or a loss of the amenities or enjoyment of life) resulting from that injury or impairment.

"place of residence" which is defined to mean a place in Australia where the employee normally resides, or resides temporarily (as a matter of necessity or convenience for the purposes of his or her employment), or any other place in Australia where the employee stays or intends to stay overnight (providing the journey to this place does not substantially increase the risk of sustaining an injury when compared with the journey from his or her place of work to the place in Australia where the employee normally resides or resides temporarily).

"place of work" which is defined to mean any place the employee is required to attend for the purpose of carrying out employment duties, including the prescribed ship on which the employee is employed or engaged, or a ship on which a trainee is required to train as part of an approved industry training course.

"prescribed ship" which is defined to mean a ship to which Part II of the Navigation Act 1912 applies, including an off-shore industry vessel in relation to which a declaration under subsection 8A(2) of the Navigation Act 1912 is in force, or a trading ship in relation to which a declaration under subsection 8AA(2) of the Navigation Act 1912 is in force.

"rehabilitation program" which is defined to include medical, dental, psychiatric and hospital services, physical training and exercise, occupational therapy and vocational training.

"seafarer" which is defined to include any person employed or engaged in any capacity on a prescribed ship, on the business of the ship, other than a pilot, a person temporarily employed on the ship in port, or a person included in the class of persons defined as "special personnel" in section 283 of the Navigation Act 1912. For this purpose, the business of the ship essentially means the master and crew functions associated with the operation of the ship, ie. the navigation, propulsion, catering, attention to the needs of passengers and the day-to-day maintenance of the ship at sea.

Special personnel are persons employed in capacities, other than as members of the crew, on special purpose ships (ie. ships which have a purpose other than purposes related to the carriage of passengers or cargo or the provision of services to ships or shipping). Examples of special purpose ships are research ships and drilling ships; examples of special personnel would be the scientists, technicians and drilling personnel on such ships.

"suitable employment" which is defined to mean any employment (including self-employment) for which the employee is suited, having regard to factors such as the employee's age, experience, training, language and other skills, the employee's suitability for rehabilitation or vocational training, the location of the employment and any other relevant matter.

"superannuation amount" which is defined to mean an amount of weekly pension or lump sum benefit received by an employee, being a benefit under a superannuation scheme arising from contributions to the superannuation scheme made by maritime industry employers.

"trainee" which is defined to mean any seafarer (or person about to enter the maritime industry) who is undergoing an approved industry training course.

Clause 4: Employees

This clause specifies the persons in relation to whom the proposed Act applies.

Subclause 4(1) identifies an employee as being a seafarer, a trainee, or a person who is normally employed as a seafarer and is attending a Seafarers Engagement Centre under an award obligation for the purpose of registering availability for employment or engagement on a prescribed ship.

Subclause 4(2) provides that a trainee or a person attending a Seafarers Engagement Centre will be taken to be employed by the Fund (see clause 96).

The employment of a trainee will be taken to be constituted by his or her attendance at an approved industry training course; the employment of a person attending a Seafarers Engagement Centre will be taken to be constituted by his or her attendance at a Centre, as required under a relevant award provision.

Subclause 4(3) provides that the Fund will become the employer of the seafarer (ie. act as the "nominal insurer") if a default event occurs in relation to the employer of a seafarer.

Clause 5: Employees lost at sea

The purpose of this clause is to expedite the payment of compensation to dependants of seafarers on a ship that is presumed to have been lost at sea with all hands.

Subclauses 5(1) and (3) provide that if it is established that a ship has not been heard of for at least three months, the ship will be taken to have been lost with all hands immediately after it was last heard of.

Subclause 5(2) provides that a copy of an agreement, list of employees on the ship or a document showing changes in the employees on the ship will be sufficient proof that the employees named in the document were on board at the time the ship was lost (in the absence of proof to the contrary).

Clause 6: Injuries suffered by employees

This clause provides that a reference to an injury in the proposed Act will mean an injury for which compensation is payable (unless the contrary intention appears).

Clause 7: Injuries etc. resulting from medical treatment

Clause 7 provides that an injury, ailment, disorder, defect or morbid condition suffered as a result of medical treatment will be deemed to be an injury if compensation is payable under the proposed Act in respect of the injury that was treated, and it was reasonable for the employee to have obtained that medical treatment.

Clause 8: Incapacity for work

Clause 8 provides that an incapacity for work resulting from an injury will be an incapacity to engage in any work, or an incapacity to engage in work at the same rank or level as the employee was engaged in immediately before the injury happened.

Clause 9: Injury arising out of, or in the course of, employment

Subclause 9(1) provides that an injury suffered by an employee will also be treated as having arisen out of or in the course of employment if it occurred:

- as a result of an act of violence that would not have occurred but for the person's employment or the performance of his or her duties or functions as an employee;
- if the employee is a seafarer - while the employee was on board the prescribed ship on which he or she was employed or engaged, or while the employee was temporarily absent from the ship during an ordinary recess in that employment (and not at his or her place of residence);

- if the employee is a trainee - while the employee was undergoing a prescribed course of training, or was at any other place (other than his or her place of residence) during an ordinary recess in the course of training;
- while the employee was attending a Seafarers Engagement Centre as required under the relevant award provision for the purpose of registering availability for employment or engagement on a prescribed ship;
- while the employee was travelling between his or her place of residence and place of work;
- while the employee was travelling between the place where he or she normally resides and another place where he or she resides temporarily, as a matter of necessity or convenience, for the purposes of his or her employment;
- while the employee was travelling between the place where he or she normally resides and a Seafarers Engagement Centre;
- while the employee was travelling between one place of work and another place of work;
- while the employee was travelling between his or her place of work or place of residence and a place where an approved industry training course was being conducted; or
- while the employee was travelling to or from his or her place of work or residence and another place for the purpose of obtaining a medical certificate or receiving medical treatment in relation to an injury; undergoing a rehabilitation program; receiving a payment of compensation; undergoing a medical examination or rehabilitation assessment; or collecting salary, wages or pay; or while the employee was attending at such a place.

Subclause 9(2) provides that an injury sustained by an employee on a journey will not be regarded as having arisen out of or in the course of employment if the journey was made by a route that substantially increased the risk of an injury when compared to a more direct route, or if the journey was interrupted in a way that substantially increased the risk of an injury.

Subclause 9(3) provides that an injury sustained at a place referred to in subclause 9(1), or during an ordinary recess in employment, will not be treated as having arisen out of or in the course of employment if the employee voluntarily and unreasonably submitted to an abnormal risk of injury.

Clause 10: Provisions relating to diseases

This clause details the circumstances in which a disease suffered by an employee will be taken to have been contributed to in a material degree by the employment.

Subclause 10(1) provides that the employee's employment will be taken to have contributed in a material degree to the contraction of the disease (unless the contrary is established) if:

- . an employee has suffered or is suffering from a disease, or the death of an employee results from a disease;
- . the disease is specified by the Minister in writing to be a disease related to employment of a specified kind; and
- . an employee had been employed or engaged in the maritime industry at any time before the symptoms of the diseases first became apparent.

Subclauses 10(2) and (3) provide that any employment in the maritime industry in which an employee has contracted a disease or suffered an aggravation of a disease will be taken to have contributed in a material degree to the contraction of the disease, if the incidence of that disease is significantly greater among persons in maritime industry employment than it is among persons employed in other types of employment (unless the contrary is established).

Subclause 10(4) provides that an employee will be taken to have contracted a disease or suffered an aggravation of a disease on the date that he or she first sought medical treatment for the disease, first became incapacitated or impaired, or died, whichever happens first.

Subclause 10(5) provides that the death of an employee will be taken to have resulted from the contraction, aggravation or recurrence of a disease if the death would have occurred at a significantly later time, apart from that disease.

Subclause 10(6) provides that an incapacity or impairment will be taken to have resulted from the contraction, aggravation or recurrence of a disease if the incapacity or impairment would not have occurred; would have occurred at a significantly later time; or the extent of the incapacity or impairment would have been significantly less, apart from that disease.

Subclause 10(7) provides that a disease will not be taken to be an injury if the employee has at any time, for purposes connected with his or her employment, made a wilful and false representation that he or she did not suffer, or had not previously suffered, from that disease.

Clause 11: Hearing impairment - time when suffered

This clause provides that a hearing impairment suffered by an employee as a result of an injury will be taken to have been suffered on the day on which the employee gave notice of the injury to the employer under clause 62.

Clause 12: Serious and wilful misconduct

This clause provides that an employee who is under the influence of alcohol or a drug (other than a drug prescribed for the employee and used in accordance with that prescription) will be taken to have engaged in serious and wilful misconduct.

Clause 13: Normal weekly earnings

This clause provides rules for the calculation of the normal weekly earnings of an employee for the purposes of the proposed Act. The normal weekly earnings of the employee will form the basis for calculating the amounts of weekly compensation payable to that employee.

Subclause 13(1) provides that an employee's normal weekly earnings will be the amount payable weekly to the employee by way of salary under the contract of employment that applied to his or her employment immediately before the injury happened.

Subclause 13(2) provides that a trainee's normal weekly earnings will be the amount that would have been payable to the trainee by way of salary under the award, determination, certified agreement or contract of employment that, apart from the injury, would have applied to his or her employment immediately upon completion of the training course.

Subclause 13(3) provides that the normal weekly earnings of a employee attending a Seafarers Engagement Centre will be an amount specified in a certified agreement.

Subclause 13(4) provides that the normal weekly earnings of any other employee will be the amount that was payable to the employee by way of salary under the contract of employment that applied to his or her employment immediately before the injury happened.

Subclause 13(5) provides for the normal weekly earnings amount to be increased if the amount payable to an employee before the injury is increased, or would have increased, because of the operation of an award, determination, certified agreement or contract of employment because the employee:

- . reaches a particular age;
- . completes a particular period of service; or
- . receives an increment in an applicable salary range.

Subclause 13(6) provides for the normal weekly earnings amount to be varied if the amount payable to a class of employees to which the employee belonged before the injury, is increased or reduced as a result of the operation of a law or the making, alteration or operation of an award.

Clause 14: Recovery of damages

This clause provides that an employee or the dependant of a deceased employee will be taken to have recovered damages on the date on which those damages were paid.

Clause 15: Persons who are wholly or partly dependent

This clause identifies the classes of persons who may be wholly or partially dependent on the employee for the purposes of the proposed Act.

Subclause 15(1) provides that a person will be taken to have been wholly or partly dependent on an employee at the date of the employee's death if the person would have been so dependent apart from the incapacity of the employee that resulted from the injury.

Subclause 15(2) provides that the spouse and any prescribed children of the employee will be deemed to have been wholly dependent on the employee if they had been living with the employee immediately before the date of the employee's death.

Subclause 15(3) provides that a son or daughter who was born alive after the employee's death will be treated as if he or she had been born immediately before the employee's death and was wholly dependent on the employee at the date of death. However, weekly benefits under subclause 29(5) will not be payable in respect of the child before the child is born.

Subclause 15(4) provides that, in determining whether a prescribed child is or was dependent on an employee, any amount of family allowance, family allowance supplement, child disability allowance or double orphans' pension payable under the Social Security Act 1991 will not be taken into account.

Clause 16: Ex-nuptial and adoptive relationships

This clause provides that ex-nuptial relationships, relationships by adoption, relationships traced through ex-nuptial relationships and relationships traced through relationships by adoption will be included in the definitions of "dependant" and "prescribed person" in clause 3.

Clause 17: Persons caring for prescribed children

This clause provides that a person who has the care of a prescribed child referred to in subparagraph (b)(iii) of the definition of "prescribed person" in clause 3 will not be disqualified from being wholly or mainly maintained by the employee merely because the employee pays the person remuneration for caring for the child.

Division 3 - Miscellaneous preliminary provisions

Clause 18: Extent of Act

This clause provides that the proposed Act will extend to all places outside Australia, including the external Territories.

Clause 19: Application of the Act

This clause ensures that the proposed Act will be within the Commonwealth's legislative powers under the Constitution. The primary, although not exclusive, bases of power are the trade and commerce power, and the Commonwealth's powers to make laws with respect to foreign corporations and trading and financial corporations (Clauses 51(i) and 51(xx) of the Constitution respectively).

Subclause 19(1) provides that the proposed Act will apply to the employment of employees on a prescribed ship that is engaged in trade or commerce:

- . between Australia and places outside Australia;
- . among the States; or

- within a Territory, between a State and a Territory or between two Territories.

Subclause 19(2) provides that the proposed Act will also have the effect it would have if:

- a reference to an employer were limited to a reference to a trading corporation formed within the limits of the Commonwealth; and
- a reference to an employee were limited to a reference to an employee employed by a trading corporation formed within the limits of the Commonwealth.

Subclause 19(3) provides that the proposed Act will also have the effect it would have if:

- a reference to an employer were limited to a reference to a financial corporation formed within the limits of the Commonwealth; and
- a reference to an employee were limited to a reference to an employee employed by a financial corporation formed within the limits of the Commonwealth.

Subclause 19(4) provides that the proposed Act will also have the effect it would have if:

- a reference to an employer were limited to a reference to a foreign corporation; and
- a reference to an employee were limited to a reference to an employee employed by a foreign corporation.

Subclause 19(5) provides that the proposed Act does not apply with respect to:

- State banking that does not extend beyond the limits of the State concerned; or
- State insurance that does not extend beyond the limits of the State concerned.

Clause 20: Act not to apply to CERC Act employees

This clause provides that the proposed Act will not apply to a person who is an employee within the meaning of the Commonwealth Employees' Rehabilitation and Compensation Act 1988.

Clause 21: Act binds Crown etc.

Subclause 21(1) provides that the proposed Act will operate to bind the Crown in right of the Commonwealth.

Subclause 21(2) provides that the proposed Act does not permit the Crown to be prosecuted for an offence.

Clause 22: Amounts of compensation

This clause provides that an amount of compensation payable under a provision of the proposed Act will be in addition to an amount payable under any other provision of the proposed Act in respect of that injury (unless the contrary intention appears).

Clause 23: Indexation

This clause provides for the annual indexation of monetary benefits payable under the proposed Act in accordance with increases in the All Groups Consumer Price Index published by the Australian Statistician.

Subclause 23(1) lists, by reference to the relevant provisions of the proposed Act, those benefits which will be subject to indexation.

Clause 24: Liability to pay compensation

This clause provides that the liability of an employer to pay compensation to a person under the proposed Act will be the liability of the employer to pay such amount of compensation, as that employer determines, to the person who is entitled in accordance with the proposed Act to receive it.

Clause 25: Compensation to be paid in full

This clause provides that if an employer's employment has made a material contribution to the injury, the employer must pay the due amount of compensation in full in respect of that injury (irrespective of any possible material contribution to the injury by any other employment).

However, if more than one employment has materially contributed to the injury, the employer that pays compensation under this clause has the right to obtain appropriate contributions (under clause 128) from the other employer or employers whose employment had materially contributed to the injury.

PART 2 - COMPENSATION

Division 1 - Injuries, property loss or damage, medical expenses

Clause 26: Compensation for injuries

This clause provides that compensation will be payable in respect of an injury suffered by an employee which results in death, incapacity for work or permanent impairment.

Subclause 26(2) provides that compensation will not be payable for an intentionally self-inflicted injury.

Subclause 26(3) provides that compensation will only be payable for an injury caused by the serious and wilful misconduct of the employee (other than a self-inflicted injury), if the injury results in the death or serious and permanent impairment of the employee.

Clause 27: Compensation for property loss or damage

This clause provides for the payment of compensation to an employee who incurs expenditure as a result of an accident that does not result in injury to the employee but causes the loss of, or damage to, artificial limbs, spectacles and other aids and appliances defined as "property" under clause 3.

Subclauses 27(1) and (2) provide that the amount of compensation payable will be the amount of the expenditure reasonably incurred by the employee in repairing or replacing the property, including any fees or charges paid or payable to a legally qualified medical practitioner or dentist, or to any other qualified person for a consultation, examination or other service reasonably rendered in connection with the repair or replacement of the property.

Subclause 27(3) provides that an employer will not be liable to pay compensation under this clause if the loss or damage is attributable to the employee's serious and wilful misconduct.

Clause 28: Compensation for medical and related expenses

This clause provides for the payment of medical expenses in relation to the treatment of an injury suffered by an employee.

Subclauses 28(1) and (2) provide that the employer will be liable to pay the appropriate costs of the medical treatment that was reasonable for the employee to obtain in the circumstances.

Subclause 28(3) provides that, if the injury necessitates the supply, replacement or repair of an artificial limb or other aid or appliance, the cost of the medical treatment will include any fees or charges payable by the employee to a legally qualified medical practitioner or dentist, or to any other qualified person for a consultation, examination or other service reasonably required in connection with the supply, replacement or repair of the artificial limb, aid or appliance.

Subclause 28(4) provides that compensation in relation to medical expenses is payable:

- . to, or in accordance with the direction of, the employee;
- . to a person who has paid the cost in respect of a deceased employee; or
- . direct to the service provider whose costs have not been paid, and where neither the employee nor the employee's personal legal representative have claimed the compensation.

Subclause 28(5) provides that any amount paid by an employer under 28(4) to a person to whom that amount is payable will, to the extent of the payment, be a discharge of the liability of the employer.

Subclauses 28(6) and (7) provide that, if compensation is payable for medical treatment, the employer will also be liable to reimburse the employee any journey and accommodation costs reasonably incurred in obtaining that medical treatment.

Subclause 28(8) sets out the matters to be taken into account by the employer in determining whether the travelling expenses referred to in subclauses 28(6) and (7) were reasonably incurred. This provision is inclusive and not exhaustive.

Subclause 28(9) provides that if a person has reasonably incurred expenditure in transporting an injured employee (or, if the employee has died, in transporting the employee's body) from the place of the injury to a hospital or similar place or to a mortuary, the employer will be liable to reimburse that person if the employee or his or her legal personal representative has not made a claim for that expenditure.

Division 2 - Injuries resulting in death

Clause 29: Compensation for injuries resulting in death

This clause provides for the payment of compensation to the dependants of an employee if an injury has resulted in the employee's death.

Subclause 29(2) provides that if the employee dies without leaving dependants, compensation will not be payable other than for medical expenses under clause 28, and funeral expenses under clause 30.

Subclause 29(3) provides that if the employee dies leaving dependants who were wholly dependent on the employee at the date of death, the amount of compensation payable (other than compensation payable for medical and funeral expenses) will be \$151,167.84 (indexed in accordance with clause 23).

Subclause 29(4) provides that if the employee dies leaving only dependants who were partly dependent on the employee at the date of death, the amount of compensation payable (other than compensation payable for medical and funeral expenses) will be such amount (not exceeding \$151,167.84), as the employer determines, having regard to any losses suffered by those dependants as a result of the cessation of the employee's earnings.

Subclauses 29(5) and (6) provide that compensation at the rate of \$50.38 per week (indexed) will be payable for the benefit of each dependent child of a deceased employee.

Subclause 29(8) provides that, if an amount of compensation is payable under subclauses (3) or (4) for the benefit of two or more dependants, the employer must determine the share of the amount payable to each dependant, having regard to the losses suffered by those dependants as a result of cessation of the employee's earnings.

Subclause 29(10) provides that, if claims are made on behalf of two or more dependants, the employer must determine all the claims as a single determination.

Clause 30: Compensation in respect of funeral expenses

This clause provides for the payment of the funeral expenses of an employee if an injury results in the employee's death.

Subclause 30(2) provides that the reasonable costs of the funeral will be payable up to a maximum of \$1,889.60 (indexed in accordance with clause 23).

Subclause 30(3) provides that an amount paid by an employer to the person who carried out the funeral will, to the extent of the payment, be a discharge of the liability of the employer.

Division 3 - Injuries resulting in incapacity for work

Clause 31: Compensation for injuries resulting in incapacity

This clause provides rules for the calculation of amounts of weekly compensation payable to an employee who is incapacitated for work as a result of an injury, other than an employee to whom clause 33, 34, 35, 36, or 37 applies.

Subclause 31(2) provides that, subject to the provisions of this Part (other than clause 31), the amount of compensation payable in respect of each of the first 45 weeks of incapacity will be the difference between the employee's normal weekly earnings and the amount he or she is able to earn in suitable employment.

Subclause 31(3) provides that if the employee is a seafarer, the compensation payable under subclause (2) is payable for each of the first 45 weeks (whether consecutive or otherwise) after the date the seafarer is left on shore at, or returned to, his or her proper return port.

Subclauses 31(4) and (5) provide the formulae for calculating the amount of weekly compensation payable after the first 45 weeks of incapacity. The formulae are structured so as to provide incentives to an employee who is able to return to work on a gradual basis. The amount of compensation payable under these provisions is as follows:

- If the employee is not employed during the week in question, the amount of compensation payable will be an amount equal to 75% of his or her normal weekly earnings, less the amount (if any) he or she is capable of earning in suitable employment.

- If the employee is employed for 25% or less of his or her normal weekly hours, the compensation payable will be an amount which, together with the amount that he or she is able to earn during that week in suitable employment, will result in a weekly income equal to 80% of his or her normal weekly earnings.

- If the employee is employed for more than 25% but not more than 50% of his or her normal weekly hours, the compensation payable will be the amount required to result in a weekly income equivalent to 85% of normal weekly earnings.

- . If the employee is employed for more than 50% but not more than 75% of his or her normal weekly hours, the compensation payable will be the amount required to result in a weekly income equivalent to 90% of normal weekly earnings.
- . If the employee is employed for more than 75% but less than 100% of his or her normal weekly hours, the compensation payable will be the amount required to result in a weekly income equivalent to 95% of normal weekly earnings.
- . If the employee is employed for 100% of his or her normal weekly hours, the compensation payable will be the amount required to result in a weekly income equivalent to 100% of normal weekly earnings.

Subclause 31(6) provides that, for the purposes of subclause (5), if an employee is employed or engaged during the whole or any part of a week as a seafarer, then the employee is to be taken to be employed for 100% of his or her normal weekly hours.

Under subclause 31(7) a ceiling is provided for the level of compensation payable, so that the maximum amount payable after the first 45 weeks of incapacity will be 150% of the Average Weekly Ordinary Time Earnings of Full-time Adults, as published from time to time by the Australian Statistician.

In order to ensure adequate economic support for incapacitated seafarers on low wages (eg trainees), the proposed Act provides a minimum benefit floor below which compensation payments cannot fall.

Subclauses 31(8), (9), (10) and (11) provide that the minimum amount of weekly compensation payable after the first 45 weeks of incapacity will be the lesser amount of:

- . \$254.46 per week, plus \$62.99 per week if there are one or more prescribed persons wholly or mainly dependent on the employee, and \$31.50 per week for each wholly or mainly dependent child; or
- . 90% of the employee's normal weekly earnings.

Subclause 31(12) provides that if a prescribed child is also a prescribed person (ie. over 16 years of age), and is the only prescribed person wholly or mainly dependent on the employee, the amount of \$31.50 would not be included in the calculation of the minimum amount of compensation payable (but the amount of \$62.99 would be).

(All the above monetary amounts are to be indexed in accordance with clause 23.)

Subclause 31(13) provides that if two or more prescribed children are prescribed persons wholly or mainly dependent on the employee, one will be considered as a prescribed person and the remainder as prescribed children for the purposes of calculating the minimum amount of compensation payable.

Subclause 31(14) defines "normal weekly hours" for the purposes of computing the "make up" weekly compensation benefits for an incapacitated employee who has obtained work other than on a ship. The normal weekly hours of such an employee will be the normal weekly hours that apply under the award, determination or certified agreement applicable to the employee's employment. If no award, determination or certified agreement applies, the normal weekly hours will be taken to be 38 hours.

Subclause 31(15) states that proper return port has the same meaning as in the Navigation Act 1912.

Clause 32: Determination of suitable employment

This clause sets out the factors to which the employer must have regard in determining the amount (if any) that the employee is able to earn in suitable employment. These factors include:

- . the amount the employee is actually earning;
- . the amount he or she would be earning if an offer of suitable employment had been accepted by the employee;
- . the amount he or she would be earning in suitable employment if the employee had undertaken or completed a rehabilitation program;
- . the amount the employee would be earning if he or she had sought and obtained suitable employment; and
- . any other relevant matter.

Clause 33: Compensation for injuries resulting in incapacity where employee is in receipt of a superannuation pension

This clause provides rules for the calculation of weekly benefits payable to an employee who, as a result of an injury, retires voluntarily or is retired from employment after the commencing day and receives a superannuation pension.

The amount of compensation payable in these circumstances will, pursuant to subclause 33(3), be offset by the sum of:

- the employer funded component of the pension; and
- the amount of contributions saved by the employee (through no longer having to contribute to the superannuation scheme).

Clause 34: Compensation payable for injuries resulting in incapacity where employee is in receipt of a lump sum benefit

This clause and the following two clauses are intended to encourage the preservation of superannuation lump sum benefits until age 65 (when weekly compensation benefits cease), by making a commensurate reduction in weekly compensation benefits if the employer-funded portion of the lump sum is not preserved.

Clause 34 covers the situation where none of the superannuation lump sum is preserved; clause 35 covers the situation where some of the lump sum is preserved; and clause 36 covers the situation where all the lump sum is preserved.

Clause 34 provides rules for the calculation of weekly benefits payable to an employee who, as a result of an injury, retires voluntarily or is retired from employment after the commencing day; is in receipt of a lump sum superannuation benefit; and who does not roll-over the lump sum benefit into another superannuation scheme or an approved deposit fund.

Subclause 34(3) provides that the amount of compensation payable in these circumstances will be offset by:

- the employer funded component of the lump sum amount; and
- the amount of contributions saved by the employee through no longer having to contribute to the superannuation scheme.

Clause 35: Compensation for injuries resulting in incapacity where employee rolled-over part of a lump sum benefit

This clause provides rules for the calculation of weekly benefits payable to an employee who, as a result of an injury, retires voluntarily or is retired from employment after the commencing day and who rolls-over part of his or her lump sum superannuation benefit into another superannuation scheme or an approved deposit fund.

Subclause 35(3) provides that the amount of compensation payable in these circumstances will be offset by:

- such proportion of the employer funded component of the lump sum amount as is not rolled over; and
- the amount of contributions saved by the employee through no longer having to contribute to the superannuation scheme.

Clause 36: Compensation for injuries resulting in incapacity where employee rolled-over the whole of a lump sum benefit

This clause provides rules for the calculation of weekly benefits payable to an employee who, as a result of an injury, retires voluntarily or is retired from employment after the commencing day and who rolls-over the whole of his or her lump sum superannuation benefit into another superannuation scheme or an approved deposit fund.

Subclause 36(3) provides that the amount of compensation payable in these circumstances will be reduced only by the amount of contributions saved by the employee through no longer having to contribute to the superannuation scheme.

Clause 37: Compensation where employee is maintained in a hospital

This clause provides that if, as a result of an injury, an employee without dependants is maintained in hospital, nursing home or similar place for a continuous period of not less than one year, the amount of compensation payable to the employee may be reduced. However, any reduction in benefits must take into account the present and probable future needs of the employee, and the period he or she is likely to be a patient. The amount of weekly compensation payable in any case must be not less than half the amount he or she would have received if not maintained in a hospital etc.

Clause 38: Compensation for incapacity not payable in certain cases

This clause provides that weekly compensation benefits will not be payable to an employee who:

- has attained 65 years of age, unless the employee is 64 years of age or over when the injury occurs, in which case benefits will only be payable for a maximum period of 12 months, starting on the day on which the injury happened;

- is in prison in connection with his or her conviction for an offence; or
- has his or her weekly benefits redeemed by a lump sum under clause 44.

Division 4 - Injuries resulting in permanent impairment

Clause 39: Compensation for injuries resulting in permanent impairment

This clause and the following three clauses deal with the payment and method of calculation of lump sum benefits to employees who, as a result of an injury, suffer a permanent impairment.

Subclause 39(2) provides that, for the purpose of determining whether an impairment is permanent, the employer must have regard to:

- the duration of the impairment;
- the likelihood of improvement;
- whether all reasonable rehabilitative treatment has been undertaken; and
- any other relevant matters.

Subclauses 39(3), (4), (5) and (6) set out the manner in which the assessment of the amount payable for the permanent impairment is to be made. Subclause 39(5) specifies that the degree of permanent impairment must be determined under the provisions of the approved Guide (see clause 42).

Subclauses 39(7) and (8) provide that, subject to clause 40, compensation will not be payable to an employee if the degree of permanent impairment is less than 10%, except if the impairment results from the loss of, or injury to, a finger or toe.

Subclause 39(9) provides that the maximum amount payable under this clause will be \$100,778.56 (indexed in accordance with clause 23).

Clause 40: Interim payment of compensation

This clause provides for an interim payment of a lump sum benefit for permanent impairment to be made.

Subclause 40(1) provides that if an employer has made a determination that an employee is suffering from a permanent impairment and is satisfied that the impairment is greater than 10% but has not made a final determination as to the degree of impairment, the employer must, at the request of the employee, make an interim determination as to the degree of impairment and assess an amount of compensation payable to the employee.

Subclause 40(2) provides that the amount of compensation payable will be the same percentage of \$100,778.56 as the percentage worked out in the interim determination to express the degree of permanent impairment of the employee.

Subclause 40(3) will enable a further amount of compensation to be payable if, after the making of an interim determination, the employer finally determines the degree of impairment to be greater than the degree assessed under the interim determination.

Subclause 40(4) provides that once a final assessment of the degree of permanent impairment has been made, no further amounts of compensation will be payable in respect of a subsequent increase in the degree of impairment unless the increase is at least 10%.

Clause 41: Compensation for non-economic loss

This clause provides for a lump sum benefit to be paid, in addition to the amount payable under clause 39, to compensate for the non-economic losses (such as pain and suffering, reduced life expectancy and loss of amenities of life) suffered by the employee.

Subclause 41(2) provides the formula for working out the amount of compensation:

$$(\$18,895.98 \times \text{DPI}) + (\$18,895.98 \times \text{DNL})$$

DPI = Degree of permanent impairment

DNL = Degree of non-economic loss

where:

Degree of permanent impairment is the percentage finally determined under clause 39 to be the degree of permanent impairment; and

Degree of non-economic loss is the percentage determined in accordance with the approved Guide to be the degree of non-economic loss suffered by the employee.

These amounts will be indexed in accordance with clause 23.

Clause 42: Approved Guide

This clause provides for the preparation by the Authority of a document to be known as the "Guide to the Assessment of the Degree of Permanent Impairment".

The Guide, and any subsequent variation to it, must be approved by the Minister (subclauses (2) and (3)).

The Guide and any instrument varying or revoking the Guide must be tabled in each House of Parliament within 15 sitting days of the Minister receiving the Guide or instrument from the Authority (subclause (7)).

Subclause 42(1) provides that the Guide is to set out the criteria and methods of assessment of impairment and non-economic loss.

Subclause 42(4) provides that assessment, reassessment or review of the degree of permanent impairment of an employee made by an employer or the AAT must be made in accordance with the Guide.

Subclause 42(6) provides that the Authority must have regard to medical opinion when preparing or varying the criteria in subclause (1).

Subclause 42(8) requires the Authority to make publicly available copies of the approved Guide and any approved variations to the Guide.

Division 5 - Household and attendant care services

Clause 43: Compensation for household services and attendant care services

Subclause 43(1) provides that if, as a result of an injury, an employee reasonably requires household services, the employer will be liable to pay compensation of such amount as is reasonable in the circumstances.

Subclause 43(2) provides that the amount payable will be at least 50% of the amount payable by the employee for those services, up to a maximum benefit of \$251.94 per week (indexed in accordance with clause 23).

Subclause 43(3) sets out the factors which the employer must have regard to in determining what household services are reasonably required. These include:

- . the extent to which household services were provided by the employee before the injury, and the employee's residual capacity to perform those services after that date;
- . the number and age of other persons living with the employee and their need for household services; and
- . the extent to which household services were provided by those persons before the injury and, having regard to the need to avoid disruption to their employment or other activities, the extent to which they might reasonably be expected to provide such services for themselves and the employee after the injury.

Subclause 43(4) provides that if, as a result of an injury, an employee reasonably requires attendant care services, the employer will be liable to pay compensation of an amount per week equal to the amount per week payable by the employee for those services, up to a maximum benefit of \$251.94 per week (indexed in accordance with clause 23).

Subclause 43(5) provides that, in determining what attendant care services are reasonably required, the employer must have regard to:

- . the nature of the employee's injury and the degree to which the injury impairs the employee's ability to provide for his or her personal care;
- . the extent to which medical services or nursing care received by the employee provides for his or her essential and regular personal care;
- . the extent to which it is reasonable to meet any wish by the employee to live outside an institution;
- . the extent to which attendant care services are necessary to enable the employee to undertake or continue employment;
- . any assessment made in relation to the rehabilitation of the employee;
- . the extent to which a relative might reasonably be expected to provide those services.

Subclause 43(6) provides that compensation will not be payable under subclause (1) during the first 28 days of incapacity, except on the ground of financial hardship or the need to provide for the adequate supervision of dependent children.

Subclause 43(7) provides that the benefit will be payable to the employee, if the employee has paid for the services; otherwise the amount will be payable direct to the service provider.

Subclause 43(8) provides that an amount paid by an employer to the service provider will, to the extent of the payment, be a discharge of the liability of the employer to pay for those services.

Division 6 - Miscellaneous

Clause 44: Redemption of compensation

This clause enables an employer to redeem its liability to make further weekly payments of compensation to an employee by paying the employee a lump sum. Redemption will only be allowed if the amount of weekly payments that would otherwise be payable is small.

The lump sum payable will be worked out using a formula giving a discounted net present value of the future stream of weekly benefits foregone between the time the redemption is made and the employee's 65th birthday.

Subclause 44(1) provides that, if the employer is liable to make payments of \$62.99 (indexed in accordance with clause 23) or less per week to an employee, and the employer determines that the degree of the incapacity is unlikely to change, the employer must redeem its liability to make further payments by the payment of a lump sum calculated in accordance with the formula in subclause 44(2).

Subclause 44(3) enables the Minister to set, or amend, the discount rate used in the formula.

Clause 45: Recurrent payments after payment of lump sum

This clause provides for the reinstatement of weekly payments of compensation after a lump sum payment has been made under clause 44 if the injury subsequently results in the employee being incapacitated to the extent that the employee is unable to engage in suitable employment.

Subclause 45(2), provides that the amount of weekly benefits payable under these circumstances will be the amount that would otherwise have been payable to the employee under clause 31, 33, 34, 35 or 36, less the amount per week that was redeemed under clause 44.

Clause 46: Cancelled determinations not to affect certain payments of compensation

This clause provides that the employer's liability to make weekly payments will be reinstated if the employer revokes its determination to make a lump sum payment under clause 44, or if that determination is set aside by a tribunal or court (except if the determination is set aside by the tribunal or court in making a further determination under which the liability of the employer to make further weekly payments is to be redeemed).

Clause 47: Reduction of compensation in certain cases

Subclause 47(1) provides that the compensation which the employer will be liable to pay to an employee under clause 31, 33, 34, 35, 36, 37 or 45 in respect of a day will be reduced by any amount that the employer is liable to pay to the employee by way of salary, wages or pay for that day.

Subclause 47(2) excludes from the operation of this clause a day in respect of which the employee would otherwise have been on paid recreation leave. In such circumstances, the compensation amount will be payable, with the recreation leave being recredited.

Subclause 47(3) excludes from the operation of subclause (1) long service leave payments, and any earnings that have already been taken into account in calculating the compensation under clause 31.

PART 3 - REHABILITATION

Clause 48: Approved rehabilitation program providers

This clause provides that only rehabilitation program providers approved under section 34 of the Commonwealth Employees' Rehabilitation and Compensation Act 1988 will be approved providers for the purpose of the proposed Act.

This provision ensures that only those providers who have met the stringent standards applied by Comcare under section 34 of the Commonwealth Employees' Rehabilitation and Compensation Act 1988 will be able to provide services under the proposed Act.

Clause 49: Assessment of capability of undertaking rehabilitation program

This clause provides that the employer must arrange for the assessment of the employee's capability to undertake a rehabilitation program if the injury lasts or is expected to last more than 28 days. The assessment must be carried out by a legally qualified medical practitioner or other suitably qualified person nominated by the employer, or a panel comprising such persons.

Subclause 49(3) provides that the employee may be required to undergo an examination by the person or panel of persons making the assessment.

Subclauses 49(4) and (5) provide that if an employee fails, without reasonable excuse, to undergo an examination to assess his or her suitability for rehabilitation, his or her rights to compensation will be suspended. Compensation will not be payable in respect of the period of suspension.

Subclauses 49(6) and (7) provide that the employer must pay the costs of the examination, and the reasonable travelling and accommodation costs incurred by the employee in attending the examination.

Subclause 49(8) requires the person or persons who conducted the examination to give the employer a written assessment of the employee's capability to undertake rehabilitation specifying, where appropriate, the kind of program he or she is considered capable of undertaking and containing such other information as the employer may require.

Clause 50: Provision of rehabilitation programs

Subclause 50(1) requires the employer to provide a rehabilitation program to an injured employee if the employee has been assessed as being capable of undertaking such a program under clause 49. The employee must be consulted on the choice of approved rehabilitation provider and the arrangements for the provision of an appropriate rehabilitation program.

The requirement for the employee to be fully consulted when making arrangements for the provision of rehabilitation is aimed at ensuring the full cooperation of the employee in undertaking the rehabilitation program.

Subclause 50(2) provides that the cost of the program will be payable by the employer.

Subclause 50(3) provides that if an employee is undertaking a full-time rehabilitation program, the amount of compensation payable will be equal to the amount that would have been payable under clause 31, 33, 34, 35, 36 or 45, as if the employee's incapacity had continued throughout the period of the program.

If the employee is undertaking a part-time program, the amount of weekly compensation payable will be such amount as is determined by the employer, being not less than the amount that would otherwise have been payable under the proposed Act and not more than the amount payable if the employee had been undertaking a full-time program. This provision will facilitate an employer paying benefits at a higher rate as an encouragement to an employee to persevere with the rehabilitation program.

Subclause 50(4) provides that an employee who is entitled to receive weekly compensation payments under subclause 50(3) will not be entitled to receive a Rehabilitation Allowance under Part 2.10 of the Social Security Act 1991.

Subclauses 50(5) and (6) provide that if an employee fails, without reasonable excuse, to undertake a rehabilitation program, his or her rights to compensation will be suspended. Compensation will not be payable in respect of the period of suspension.

Clause 51: Compensation payable in respect of certain alterations etc.

This clause provides that, if the employee is undertaking, or has completed, a rehabilitation program or has been assessed as not being capable of undertaking such a program, compensation will be payable to that employee for the cost of any alterations or modifications etc. reasonably required by the employee.

The alterations or modifications etc. to which this clause will apply are specified as alterations to the employee's residence or place of work; modifications to a vehicle or article used by the employee; and the provision, replacement and repair of aids and appliances for the use of the employee.

Subclause 51(2) provides that, in determining the amount of compensation payable in a particular case, the employer must have regard to:

- . the likely period during which the alteration, modification, aid or appliance will be required;
- . any difficulties faced by the employee in gaining access to, or enjoying reasonable freedom of movement in, his or her place of residence or work;
- . any difficulties faced by the employee in using his or her vehicle and any alternative means of transport available;
- . whether an aid or appliance can be rented;
- . if the employee has previously received compensation under this clause and subsequently disposed of his or her residence or vehicle - whether the value of the residence or vehicle was increased as a result of the alteration or modification; and
- . any other relevant matter.

Subclause 51(3) provides that the compensation will be payable, as appropriate:

- . to, or as directed by, the employee;
- . to a person who paid the cost, if the employee died before paying for the cost of the alterations etc.; or
- . to the person to whom the cost is payable.

Subclause 51(4) provides that an amount paid by an employer to the person to whom the cost is payable will, to the extent of the payment, be a discharge of the liability of the employer.

Clause 52: Duty to provide suitable employment

This clause requires the employer to take all reasonable steps to provide suitable employment for an employee who is undertaking or has completed a rehabilitation program, or to assist the employee in finding such employment.

PART 4 - LIABILITIES ARISING APART FROM THIS ACT

Clause 53: Interpretation

This clause provides for the definition of certain terms used in this Part. These definitions include provisions that:

- . a reference to an employer includes a reference to a related corporation that owns, manages or is chartering or operates the prescribed ship; and
- . a reference to an employee includes a reference to an employee of a related corporation that is performing duties on, or in connection with, the prescribed ship.

This clause will ensure that an employee cannot avoid the limitations placed on common law actions under clause 54 by pursuing an action against a related corporation (or an employee of a related corporation).

Clause 54: Employee not to have right to bring action for damages against employer etc. in certain cases

This clause restricts actions or other proceedings for damages by an employee against his or her employer or a fellow employee, in respect of an injury sustained by the employee in the course of employment, or the loss of, or damage to, property used by the employee.

Subclause 54(1) provides that an employee will not have the right to bring an action or other proceedings against his or her employer, or a fellow employee, except in accordance with clause 55.

Subclause 54(2) provides that subclause (1) applies whether the injury, loss or damage occurred before or after the commencement of the clause.

Subclause 54(3) provides that subclause (1) does not apply in relation to proceedings instituted before the date of commencement of the clause.

Clause 55: Actions for damages - election by employees

Subclause 55(1) enables an employee who has an entitlement to compensation under clauses 39, 40 or 41 to elect to institute an action for damages for non-economic loss against his or her employer or a fellow employee.

Subclauses 55(2) and (3) require the election under subclause (1) to be irrevocable, and to have been given to the employer before any amount of compensation is paid to the employee under clauses 39, 40, or 41.

Subclause 55(4) provides that if the employee makes an election, subclause 54(1) will not apply and compensation under clauses 39, 40 or 41 will not be payable in respect of the injury after the date of the election.

Subclause 55(5) limits the amount that a court may award in damages for an action or other proceedings instituted under this clause to an amount not exceeding \$138,570.52 (indexed).

Clause 56: Notice of proceedings against third party

This clause requires an employee, or a dependant of a deceased employee, who institutes proceedings against a third party, to notify the employee's employer within seven days of becoming aware that the proceedings have been instituted.

A person who fails to comply with this provision will be liable to a penalty of 5 penalty units.

Clause 57: Notice of proceedings against employer

This clause requires an employee, or a dependant of a deceased employee, who institutes proceedings against the employee's employer or a fellow employee, to notify the employer within seven days of becoming aware that the proceedings have been instituted.

A person who fails to comply with this provision will be liable to a penalty of 5 penalty units.

Clause 58: Compensation not payable if damages recovered

This clause requires an employee, or the dependant of a deceased employee, to notify the employee's employer of the recovery of damages from a third party within 28 days of the damages being recovered.

A person who fails to comply with this provision will be liable to a penalty of 10 penalty units.

Subclause 58(3) provides that if, before the recovery of damages, compensation had been paid to an employee or the dependant of a deceased employee, the employee or dependant will be liable to pay the employer the amount of that compensation or the amount of damages, whichever is the less.

Subclauses 58(4), (5) and (6) provide that no further amounts of compensation will be payable after the recovery of damages from a third party, unless the damages were recovered as a result of proceedings instituted or taken over by the employer under clause 59; or as a result of proceedings instituted as a result of an election by the employee under clause 55.

Subclause 58(7) provides that the amount of compensation repayable by a dependant of a deceased employee under subclause (3) will not include any amounts of weekly compensation paid in respect of a dependent child of a deceased employee under subclause 29(5).

Subclause 58(8) provides that if an employee, or a dependant of a deceased employee, satisfies the employer that part of the damages recovered did not relate to an injury, loss or damage for which compensation had been paid, the amount repayable under this clause will be limited to the amount that did relate to that injury, loss or damage.

Clause 59: Proceedings against third parties

This clause empowers the employer to institute or take over proceedings against a third party for the recovery of damages in certain circumstances where compensation has been paid under the proposed Act, and the injury, loss, damage or death occurred in circumstances which appear to create a legal liability in a third person to pay damages in respect of that injury or loss etc. The proceedings will be in the name of the employee or dependant to whom it appears the other party would be liable.

Importantly, an employer may only take over or institute such proceedings:

- with the consent of the employee or dependant (subclause 59(2)); or
- if the employee or dependant does not consent, where proceedings have not been commenced by the employee or dependant and the delay is unreasonable (subclause 59(3)); or
- if the employee or dependant does not consent, where any proceedings which have been commenced by the employee or dependant have not been properly prosecuted (subclause 59(3)).

Whether a delay is "unreasonable" is an objective test having regard to all the circumstances.

Subclause 59(4) provides that any proceedings taken over or instituted by the employer in the name of an employee or dependant must be conducted in the interests of the person in whose name the proceedings were instituted. For example, an employer could not settle proceedings for an amount which covers its own costs (including the compensation it has paid) but which is less or is not on terms that a reasonable employee or dependant might accept if properly advised in all circumstances.

Subclause 59(7) provides that an employer may only settle proceedings with the written consent of the employee or dependant. However, where the employee withholds their consent unreasonably, the employer may also settle the proceedings.

Subclause 59(11) provides that the employer must, after deducting an amount equal to the amounts of compensation paid to the employee or dependant and the costs of the proceedings, pay to the employee or dependant any balance of an award of damages obtained as a result of proceedings under this clause.

Subclause 59(12) provides that, if an amount of damages is paid to an employee or dependant under subclause 59(11), he or she will not be entitled to further amounts of compensation until such time as the amount of compensation which would otherwise have been payable equals the amount paid by the employer under 59(11).

Clause 60: Payment of damages by persons to employer

This clause establishes a process by which overpayments of compensation by the employer can be avoided.

The clause empowers the employer to require a third party who is liable or who has agreed to pay damages to an employee or dependant in respect of an injury or death for which compensation is also payable, to pay those damages direct to the employer rather than to the employee or dependant.

The employer will be able to request payment of only such amount of damages as does not exceed the amount of compensation paid to the employee or dependant.

The clause also provides that the payment of such damages to the employer will discharge, to the extent of that payment, the liability of the third party to pay damages to the employee or dependant.

Clause 61: Compensation not payable both under Act and under award

This clause provides that, if an employee is eligible to receive compensation under the proposed Act and benefits under an award in respect of the same injury, he or she must elect which to receive.

An election made by an employee will be irrevocable, but is not binding on his or her dependants if he or she dies after making the election.

The principle behind this provision is that the compensation benefits provided through the proposed Act provide appropriate and equitable levels of support, without the need for recourse to "top up" provisions in an award.

Accordingly, the purpose prevents an employee taking advantage of more generous short term benefits under an award provision and then switching to compensation benefits once the award benefits have been exhausted.

PART 5 - NOTICES AND CLAIMS

Clause 62: Notice of injury or loss of, or damage to, property

Subclauses 62(1) and (2) provide that the proposed Act will not apply in relation to an injury, or loss of or damage to, property used by an employee, unless written notice has been given to the employer. Such a notice must be given as soon as practicable after the employee becomes aware of the injury, loss or damage or, if the employee has died, as soon as practicable after his or her death.

Subclause 62(3) provides that if the injury or loss of, or damage to, property occurred on a prescribed ship, a notice given to the master of the ship is to be taken as having been given to the employer.

Subclause 62(4) provides that, if the notice fails to comply with the requirements of the clause, the notice will still be taken to have been properly given if:

- . the employer would not by reason of the non-compliance be prejudiced; or
- . the non-compliance resulted from the death or absence from Australia of a person, or from ignorance, or mistake, or any other reasonable cause.

Clause 63: Claims for compensation

Subclause 63(1) provides that compensation will not be payable unless a claim is made in accordance with this clause.

Subclause 63(2) provides that a claim must be made by giving the employer a claim in accordance with a form approved by the Authority and a medical certificate. A medical certificate will not be required in the case of claims for medical expenses, death benefits and funeral expenses under clauses 28, 29 and 30 respectively.

Subclause 63(2) also requires that the employer must be given a notice setting out the name and address of any other employer being claimed against for the injury and the name and address of any other employer whose employment is believed to have made a material contribution to the injury.

A claimant who fails to provide a notice setting out the name and address of any other employer claimed against etc. will be liable to a penalty of 5 penalty points.

Subclause 63(3) provides that if a claim (other than a claim relating to medical expenses, death benefits and funeral expenses) is not accompanied by a medical certificate, the claim will be taken as not having been made until such a certificate is produced.

Subclause 63(4) provides that strict compliance with an approved form will not be required and that substantial compliance will be sufficient.

Clause 64: Survival of claims

Subclause 64(1) provides that if a person who is entitled to make a claim for compensation dies without making a claim, the claim may be made by the person's legal personal representative.

Subclause 64(2) provides that a claim will not be affected by the subsequent death of the claimant.

Subclause 64(3) provides that clause 134 will apply to an amount payable under a determination made in respect of a claim referred to in this clause, as if the deceased person had died after the determination was made.

Subclause 64(4) provides that the clause does not apply to claims for compensation for non-economic loss.

Clause 65: Claims may not be made in certain cases

This clause provides that once a payment under subclauses 29(3) or (4) has been made to the dependant of a deceased employee, following a claim made by or on behalf of that dependant, no other dependant will be entitled to claim compensation under clause 29.

Clause 66: Power to require medical examination

This clause enables an employer to require an employee who has made a claim for compensation to submit to a medical examination.

Subclauses 66(2) and (3) provide that, if an employee fails without reasonable excuse to undergo a medical examination, his or her rights to compensation and to institute or continue any proceedings will be suspended until the examination takes place. Compensation will not be payable in respect of the period of suspension.

Subclauses 66(4) and (5) provide that the employer will be liable to pay the costs of the medical examination, and the reasonable travelling and accommodation costs incurred by the employee in attending the examination.

Subclause 66(6) provides that an employee must not be required to submit for a medical examination at more frequent intervals than are specified by the Minister.

Clause 67: Power to request the provision of information relevant to claim

This clause enables an employer, if satisfied that a claimant can provide information or a document relevant to the claim, to request the claimant to provide that information or document within 28 days, or within such longer period as the employer may allow.

Subclause 67(3) provides that, if a claimant fails to comply with such a request, the employer may refuse to deal further with the claim until the request is complied with.

Clause 68: Certain documents to be supplied on request

This clause requires an employer to give to the claimant any document held by the employer which is relevant to the claim.

An employer that fails to comply with this provision will be liable to a penalty of 50 penalty units.

Clause 69: Neither section 67 nor 68 to affect legal professional privilege

This clause provides that, subject to clause 70, neither clause 67 nor 68 apply to information and documents which are subject to legal professional privilege.

Clause 70: Legal professional privilege not to apply to medical reports

The clause provides that legal professional privilege will not apply to a medical report relevant to an injury in respect of which the employee is claiming compensation.

Clause 71: Bankruptcy etc. of actual employer

This clause sets out the arrangements for handling a claim should a "default event" occur, ie. if an employer is unable to meet its liabilities to pay compensation to an injured employee.

Subclause 71(1) provides that if the Fund has become the employer of the employee because of the operation of subclause 4(3) in relation to a default event, the claimant is to provide the Fund with either a copy of any notices given to the defaulting employer or new notices in respect of the claim.

The time limits applicable under clause 72 or 73 for determining a claim will apply to the Fund from the time the Fund receives the copy of the notices, or new notices, as appropriate.

Subclause 71(2) provides that if the defaulting employer had requested the claimant to provide information under clause 67 and the claimant had not provided that information to the employer, the information is to be provided to the Fund.

Clause 72: Time limit for determining claims relating to the death of an employee

This clause sets time limits for the employer to determine a claim for compensation if an employee has died as a result of an injury.

Subclause 72(1) provides that the employer must determine the claim by whichever is the later of the following times:

- . within 60 days after receiving the claim;
- . if the employer has, within the original 60 day period, requested the claimant to provide further information under clause 67 - within 60 days of the employer receiving that information; or
- . if, at the request of the employer within the original 60 day period, the Authority has granted a longer period to the employer to make its determination - at the end of the longer period.

Subclause 72 (2) provides that an employer that fails to comply with this provision will be taken to have rejected the claim.

Subclause 72(3) provides that a request by an employer to the Authority for an extension of time to make a determination must state fully and in detail the circumstances concerning, and the reasons for, the request.

Clause 73: Time limit for determining liability for claims relating to injuries to employees other than injuries resulting in death

This clause sets time limits for an employer to determine its liability in relation to a claim for compensation for an injury to an employee.

Subclause 73(1) provides that the employer must determine its liability by whichever is the later of the following times:

- . within 12 days after receiving the claim;
- . if the employer has, within the original 12 day period, requested the claimant to provide further information under clause 67 - within 12 days of the employer receiving that information; or
- . if, at the request of the employer within the original 12 day period, the Authority has granted a longer period to the employer to make its determination - at the end of the longer period.

Subclause 73(2) provides that an employer that fails to comply with this provision will be taken to have rejected the claim.

Subclause 73(3) provides that if the injury has resulted in an incapacity for work compensation will be payable in respect of the claim from the date liability arose under clause 31.

Subclause 73(4) provides that if the injury has resulted in a permanent impairment, compensation will be payable in accordance with clause 39 or 40. This means that although the employer is required to determine its liability within 12 days (or such longer period as the Authority allows under 73(1)) compensation would not be payable until the conditions of clause 39 or 40 are satisfied.

Subclause 73(5) provides that a request by an employer to the Authority for an extension of time to make a determination must state fully and in detail the circumstances concerning, and the reasons for, the request.

Clause 74: Employer may seek review of Authority's decision

This clause provides that if an employer is dissatisfied with the Authority's decision in response to a request for an extension of the time limits, the employer may apply to the AAT for a review of the decision.

Clause 75: Sections 72 to 74 (inclusive) not to apply to Authority if declaration made under section 100

This clause provides that if, by a Ministerial declaration under section 100, the Authority has the Fund's employer functions, powers and obligations, clauses 72 to 74 (inclusive) will not apply to the Authority.

PART 6 - RECONSIDERATION OF DETERMINATIONS AND REVIEW OF
DECISIONS BY THE ADMINISTRATIVE APPEALS TRIBUNAL

Division 1 - Definitions

Clause 76: Interpretation

This clause provides for the definition of certain terms used in this Part and identifies those provisions of the proposed Act containing determinations which will be subject to reconsideration and review under this Part.

Clause number Determination

13	Normal weekly earnings
26	Compensation for injuries
27	Compensation for property loss or damage
28	Compensation for medical and related expenses
29	Compensation for injuries resulting in death
30	Compensation in respect of funeral expenses
31	Compensation for injuries resulting in incapacity
33	Compensation for injuries resulting in incapacity where employee is in receipt of a superannuation pension
34	Compensation for injuries resulting in incapacity where employee is in receipt of a lump sum benefit
35	Compensation for injuries resulting in incapacity where employee rolled-over part of a lump sum benefit
36	Compensation for injuries resulting in incapacity where the employee rolled-over the whole of a lump sum benefit

Clause number Determination

37	Compensation where employee is maintained in a hospital
39	Compensation for injuries resulting in permanent impairment
40	Interim payment for compensation
41	Compensation for non-economic loss
43	Compensation for household services and attendant care services
44	Redemption of compensation
45	Recurrent payments after payment of lump sum
49	Assessment of capability of undertaking rehabilitation program
50	Provision of rehabilitation programs
51	Compensation payable in respect of certain alterations etc.
66	Power to require medical examination
126	Refusal to deal with claim (Employee to give information about prior employers)

Division 2 - Reconsideration of determinations by employers

Clause 77: Determinations to be notified in writing

This clause requires the employer, as soon as practicable after a determination has been made, to provide the claimant with a written notice setting out the terms of the determination, the reasons for the determination and a statement to the effect that the claimant may request the determination to be reconsidered under subclause 78(2).

Subclause 77(2) exempts from this requirement a determination by an employer under subclause 28(1) that the full costs of medical treatment obtained by an employee are payable to a person other than the employee.

Clause 78: Reconsiderations of determinations

Subclause 78(1) provides that an employer may, on its own initiative, reconsider a determination; whether or not the determination is, or has been, the subject of review by the AAT.

Subclause 78(2) provides that a claimant will be able to request an employer to reconsider its determination.

Subclause 78(3) provides that a request for reconsideration must set out the reasons for the request and be given to the employer within 30 days of the day on which the determination first came to the notice of the claimant, or within such further period of time as the employer may allow.

Subclauses 78(4) and (5) provide that, on receipt of a request for the reconsideration of a determination, the employer, if a party to a certified agreement that relates to industry panels, must arrange for an industry panel to assist the employer in reconsidering its determination. If the employer is not party to a certified agreement, the employer must arrange for a Comcare officer to assist in the reconsideration of the determination.

Subclause 78(6) provides that after reconsidering its determination, the employer must make a decision affirming, revoking or varying the determination as the employer thinks fit.

Clause 79: Time limit for reconsideration of determinations

This clause sets time limits for an employer to reconsider its determination.

Subclause 79(1) provides that the employer must reconsider a request by whichever is the later of the following times:

- . within 35 days after receiving the request;
- . if the employer has, within the original 35 day period, requested the claimant to provide further information under clause 83 - within 35 days of the employer receiving that information; or
- . if, at the request of the employer within the original 35 day period, the Authority has granted a longer period to the employer to make its determination - at the end of the longer period.

Subclause 79(2) provides that an employer that fails to comply with this provision will be taken to have rejected the claim.

Subclause 79(3) provides that a request by an employer to the Authority for an extension of time to reconsider a determination must state fully and in detail the circumstances concerning, and the reasons for, the request.

Clause 80: Employer may seek review of Authority's decision

This clause provides that an employer, if dissatisfied with a decision of the Authority in relation to the employer's request for an extension of time to reconsider a determination, may apply to the AAT for a review of the Authority's decision.

Clause 81: Sections 79 and 80 not to apply to Authority if declaration made under section 100

This clause provides that if, by a Ministerial declaration under clause 100, the Authority has the Fund's employer functions, powers and obligations, clauses 79 and 80 will not apply to the Authority.

Clause 82: Industry panel or Comcare to give copy of report to employer to claimant

This clause provides that the industry panel or Comcare, as the case requires, must give the claimant a copy of any report it gives to an employer in relation to the reconsideration of a determination.

Clause 83: Power to request the provision of information relevant to reconsideration

This clause enables an employer, if satisfied that a claimant seeking a reconsideration of a determination can provide information or a document relevant to the claim, to request the claimant to provide that information or document within 28 days, or within such longer period as the employer may allow.

Subclause 83(3) provides that, if a claimant fails to comply with such a request, the employer may refuse to deal further with the claim until the request is complied with.

Clause 84: Section 83 not to affect legal professional privilege

This clause provides that, subject to clause 85, clause 83 does not affect legal professional privilege.

Clause 85: Legal professional privilege not to apply to medical reports

The clause provides that legal professional privilege will not apply to a medical report relevant to an injury in respect of which the employee is claiming compensation.

Clause 86: Bankruptcy etc. of employer

This clause sets out the arrangements for handling the reconsideration of a claim should a "default event" (ie. an employer unable to meet its liabilities) occur during the reconsideration process.

Subclause 86(1) provides that if the Fund has become the employer of the employee because of the operation of subclause 4(3) in relation to a default event, the claimant is to provide the Fund with either a copy of the notice given to the defaulting employer requesting the reconsideration of a determination or a new notice requesting a reconsideration.

The time limits applicable under clause 72 or 73 for determining a claim will apply to the Fund from the time it receives the copy of the notice, or a new notice, as appropriate.

Subclause 86(2) provides that if the defaulting employer had requested the claimant to provide information under clause 83 and the claimant had not provided that information to the employer, the information is to be provided to the Fund.

Clause 87: Reviewable decision to be notified in writing

This clause requires the employer, as soon as practicable after a determination has been reconsidered, to serve on the claimant a notice setting out the terms of the reviewable decision, the reasons for the decision and a statement to the effect that the claimant may apply to the AAT to have the decision reviewed.

Clause 88: Applications to the AAT

This clause enables an application to be made to the AAT for the review of a determination which has been reconsidered by the employer. Such an application may only be made by the claimant.

Division 3 - AAT review of reviewable decisions and extension of time decisions

Clause 89: Modified AAT Act to apply

This clause makes certain modifications to the Administrative Appeals Tribunal Act 1975.

Subclause 89(3) modifies subsection 29(2) of the Administrative Appeals Tribunal Act 1975 to enable an application for review to be lodged within 60 days (rather than 28 days) of the claimant being made aware of the reviewable decision.

Subclause 89(4) provides that if the Fund takes over from the employer because a default event has arisen during the AAT review process, the AAT is to adjourn proceedings, or not begin proceedings, for twenty-eight days.

Clause 90: Evidence in proceedings before the AAT

This clause provides that unless a claimant discloses to the AAT at least 28 days before the date of the hearing a matter which he or she intends to adduce, that matter will not be admissible without leave of the AAT.

Subclause 90(2) provides that if an employer has given the claimant a notice requesting that a document or information be provided and the claimant has failed to comply with that notice, that document or information will not be admissible without leave of the AAT.

Subclause 90(3) provides that leave will not be granted unless the claimant provides a statement of reasons why he or she failed to comply with the notice, and the AAT is satisfied that there are special circumstances justifying its admission.

Clause 91: Costs of proceedings before AAT - general

Subclause 91(1) provides that, subject to the remaining provisions of the clause, costs incurred in relation to proceedings before the AAT will be borne by the party that incurred those costs.

Subclause 91(2) provides that, if proceedings before the AAT are aborted because a determination has been reconsidered under subclause 78(1), the employer will reimburse the claimant for costs reasonably incurred in relation to those proceedings.

Subclauses 91(3) and (4) provide that, if the employer had, pursuant to clause 67 or 83, requested a claimant to provide information or a document and the claimant had failed to comply with that request, the employer will not be liable to reimburse the claimant for costs if the employer is satisfied that a more favourable determination or redetermination would have been made had the information or document been provided.

By subclause 91(6), a decision to deny costs under subclauses (3) or (4) will itself be capable of review by the AAT.

Clause 92: Costs of proceedings before AAT - when costs payable by employer

Subclause 92(1) provides that, if the AAT makes a decision varying or setting aside a reviewable decision and making a decision more favourable to the claimant, the AAT may order that the claimant's costs be paid by the employer.

Subclause 92(2) provides that, if the AAT sets aside a reviewable decision and remits the case for redetermination by the employer, the AAT must order that the claimant's costs be paid by the employer.

Subclause 92(3) provides that neither subclause 92(1) nor 92(2) authorises the AAT to order that an employer is to pay any costs incurred by a claimant in relation to an application for an extension of time for applying to the AAT for a review of a reviewable decision.

Subclauses 92(4) and 92(5) provide that the AAT must not order the employer to pay a claimant's costs if the AAT is satisfied that the claimant had failed to comply with a request for information or a document made under clause 67 or clause 83 and that the employer would have made a more favourable determination had the information or document been provided.

Subclause 92(6) provides that the AAT may enforce the payment of a claimant's costs awarded against an employer in the absence of agreement between the parties.

PART 7 - COMPULSORY INSURANCE AND THE FUND

Division 1 - Compulsory Insurance

Clause 93: Compulsory Insurance

This clause requires any employer, other than the Fund, to be insured by an insurer authorised under the Insurance Act 1973, or indemnified by a protection and indemnity association that has been approved by the Authority and is a member of the International Group of Protection and Indemnity Associations.

An employer that fails to comply with this provision will be liable to a penalty of 50 penalty points.

Subclause 93(2) provides that the employer may arrange with the insurer or protection and indemnity association for the employer to be liable for an amount of excess or deductible in respect of a claim or claims.

Subclause 93(3) provides that an employer applying to an authorised insurer must provide full details of salaries or wages paid to employees relevant to the working out of the premium payable under the policy.

Clause 94: Employer to give details of insurance or indemnity arrangements to Authority

This clause provides that an employer must give the Authority the name and address of the authorised insurer or approved protection and indemnity association within 14 days of being issued with, or renewing, a policy of insurance or indemnity or becoming a member of, or renewing membership of, a protection and indemnity association.

An employer that fails to comply with this provision will be liable to a penalty of 20 penalty units.

Clause 95: Authority may require evidence from employer

Under this clause the Authority may require the employer to provide evidence of the policy of insurance or indemnity, or membership of a protection and indemnity association, as required under clause 93.

An employer that fails to comply with this provision will be liable to a penalty of 20 penalty units.

Division 2 - The Fund

Clause 96: The Fund

This clause provides that the Minister may approve a body corporate to be the Fund for the purposes of the proposed Act if the Minister is satisfied that:

- . its participants represent not less than 80% of seafarer berths on prescribed ships;
- . the body corporate has the management and resources to expeditiously process and determine claims and to develop and manage rehabilitation plans; and
- . subject to clause 97 the body corporate has access to sufficient funds to enable the prompt settlement of its liabilities arising under the proposed Act.

Clause 97: Fund to insure

This clause provides that the Fund must take out insurance to cover "catastrophic events". The provision requires the Fund to insure the amount of its liability that exceeds \$1,000,000 for a single event which results in an injury to one or more employees.

Clause 98: Fund to provide Authority with financial information

This clause provides that the Fund must provide the Authority with financial information, as and when the Authority determines.

If the Fund fails to comply with this provision it will be liable to a penalty of 20 penalty units.

Clause 99: Minister may revoke approval under section 96

This clause provides that the Minister may revoke approval of the Fund on the application of the body corporate approved under clause 96, or if the Minister thinks any of the conditions of clause 96 are no longer satisfied or if the Minister is satisfied that the Fund has not complied with the insurance requirements under clause 97.

Division 3 - Reserve function of Authority

Clause 100: Ministerial declaration

This clause provides that the Minister by a Gazette notice, may declare the Authority to have the Fund's employer functions, powers and obligations if the Minister:

- . has not approved a body corporate to be the Fund under clause 96; or
- . has revoked the approval under clause 100.

Clause 101: Effect of Ministerial declaration

This clause provides that if the Minister has made a declaration under clause 100, references to the Fund in clauses 71, 86 and 129 and subclauses 4(2), 4(3) and 89(4) are to apply as if the references were references to the Authority.

Clause 102: Authority to insure if declaration made under section 100

This clause provides that, if the Authority has assumed the Fund's employer functions, powers and obligations under clause 100, the Authority must take out insurance to cover "catastrophic events". The provision requires the Authority to insure the amount of its liability that exceeds \$1,000,000 for a single event which results in an injury to one or more employees.

PART 8 - ADMINISTRATION AND FINANCE

Division 1 - Seafarers Rehabilitation and Compensation Authority

Clause 103: Establishment

This clause provides for the establishment of the Seafarers Rehabilitation and Compensation Authority.

Clause 104: Functions

This clause provides that, in addition to specific functions vested in the Authority elsewhere in the proposed Act, the functions of the Authority are as follows:

- (a) to monitor the operation of the proposed Act;
- (b) to promote high operational standards of claims management and effective rehabilitation procedures by employers;
- (c) to co-operate with other bodies or persons with the aim of reducing the incidence of injury to employees;
- (d) to publish material relating to any of the functions referred to in paragraphs (a), (b) and (c);
- (e) to advise the Minister about anything relating to the Authority's functions and powers and other matters relating to the compensation and rehabilitation of employees.

Clause 105: Powers

This clause provides that the Authority will have the power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

Clause 106: Power to obtain information

Subclause 106(1) enables the Authority to require employers to provide documents or information relevant to the compilation of statistics for injury prevention purposes.

Subclause 106(2) provides that if a declaration has been made under clause 100 that the Authority has the Fund's employer functions, powers and obligations, the Authority may require an employer to provide any documents or information in the employer's possession or control that are relevant to a claim made by, or in relation to, an employee.

If employer who contravenes either provision will be liable to a penalty of 20 penalty units.

Clause 107: Directions by Minister

Subclause 107(1) enables the Minister to give directions to the Authority with respect to the performance of its functions or the exercise of its powers.

Subclause 107(2) provides that the Minister is not to give directions in relation to a particular case.

Subclause 107(3) provides that the Authority must comply with a direction given under subclause (1).

Division 2 - Constitution and Meetings of Authority

Clause 108: Authority is body corporate

This clause describes the Authority as a body corporate with perpetual succession which will have a seal. The Authority will be able to acquire, hold and dispose of property and sue or be sued in its corporate name.

Subclause 108(3) directs that all courts and judges must take judicial notice of the Authority's seal on a document and must presume that the seal was duly affixed.

Clause 109: Constitution

This clause provides that the Authority will consist of six members - a Chairperson, a Deputy Chairperson, two members representing employers and two members representing employees.

Clause 110: Appointment of members

This clause provides for the appointment of the members of the Authority by the Minister.

Subclauses 110(2) and (3) provide that the members representing employers and employees must be appointed on the nomination of organisations considered by the Minister to represent the interests of employers and employees respectively.

Subclause 110(4) provides that a member is to hold office on a part-time basis.

Clause 111: Term of office

This clause provides that the Chairperson and Deputy Chairperson are to hold office for a term not exceeding 5 years. Other members are to hold office for a term not exceeding 3 years. All members will be eligible for re-appointment.

Clause 112: Deputies of members

This clause provides that a member may, with the approval of the Minister, appoint a deputy who will be entitled, in the absence of the member who appointed him or her, to attend meetings of the Authority. At such meetings, the deputy will be taken to be the member.

Clause 113: Persons acting as Chairperson or Deputy Chairperson

This clause provides that the Minister may appoint a person to act as the Chairperson or Deputy Chairperson during a vacancy in the office of Chairperson or Deputy Chairperson, or during any period that the Chairperson or Deputy Chairperson is absent.

Clause 114: Remuneration and allowances

This clause provides that, subject to the Remuneration Tribunal Act 1973, the Remuneration Tribunal will determine the remuneration of the Chairperson and Deputy Chairperson but, if no determination is in operation, they will be paid such remuneration and allowances as are prescribed.

Subclause 114(2) provides that members and deputies of members will be paid such allowances as are prescribed.

Clause 115: Leave of absence

This clause provides that the Minister may grant the Chairperson leave of absence from meetings of the Authority.

Subclause 115(2) provides that the Chairperson may grant other members leave of absence from meetings.

Clause 116: Disclosure of interests

This clause requires a member to disclose to the Authority any direct or indirect pecuniary interest in a matter being considered or about to be considered by the Authority. That member must take no further part in any decision or deliberation in relation to the matter in question without the consent of the Minister or the Authority.

Subclause 116(3) provides that the member who has made the disclosure must not take part in the deliberation by the Authority concerning the propriety of his or her participating, or continuing to participate, in the consideration of the matter in question.

Clause 117: Resignation

This clause enables a member of the Authority to resign by delivering a signed notice of resignation to the Minister.

Clause 118: Termination of appointment

This clause sets out the circumstances in which the Minister may terminate the appointment of a member.

Subclause 118(1) provides that the Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

Subclause 118(2) provides that the Minister must terminate the appointment of a member in circumstances relating to the member's bankruptcy, unauthorised absences, failure to disclose a pecuniary interest under clause 116 or (if the member was nominated by an organisation representing employers or employees) on the written request of the organisation that nominated the member.

Clause 119: Meetings

This clause directs the Authority to hold meetings as often as necessary but at least once every three months. The clause also sets out the procedures to be followed at such meetings.

Division 3 - Finance

Clause 120: Application of Division 3 of Part XI of the Audit Act

This clause provides that the Authority will be a public authority to which Division 3 of Part XI of the Audit Act 1901 applies. Subclause 120(2) requires the Authority to submit its first annual report on its operations as soon as practicable after 30 June 1993.

By subclause 120(3), the Authority will be required to include particulars in its annual report of each direction given by the Minister under clause 107.

Clause 121: Money of Authority

This clause provides for the payment to the Authority of such money as is appropriated by the Parliament. The Minister for Finance will be able to give directions in relation to the timing and amounts of those payments.

Subclause 121(3) provides that the money of the Authority will be applied only to the payment or discharge of the Authority's expenses, charges, liabilities and obligations; the payment of remuneration and allowances; and in making any other payments required or permitted to be made by the Authority.

Subclause 121(4) provides that money not immediately required may be invested.

Clause 122: Estimates of receipts and expenditure

This clause requires the Authority to prepare estimates of receipts and expenditure for each financial year and submit those estimates to the Minister as directed.

Subclause 122(2) requires that the money of the Authority must not be expended otherwise than in accordance with the estimates approved by the Minister.

Subclause 122(3) provides that a reference to receipts and expenditure in this clause does not include a reference to amounts of compensation paid or payable by the Authority under the proposed Act.

Clause 123: Exemption from taxation

By this clause, the Authority will not be subject to taxation under any laws of the Commonwealth, or a State or a Territory.

Clause 124: Borrowings

This clause allows the Authority to borrow money only from the Commonwealth, and only on such terms and conditions as the Treasurer specifies.

Division 4 - Miscellaneous

Clause 125: Delegation by Authority

This clause enables the Authority to delegate all or any of its powers and functions to a person who holds, or performs the duties of a Senior Executive Office or a Senior Officer Grade A, B or C in the Department.

PART 9 - MISCELLANEOUS

Clause 126: Employee to give information about prior employers

This clause enables an employer that has been given a claim to request the claimant to provide, within 28 days, the names and addresses of former employers.

Subclause 126(2) provides that if the claimant, without reasonable excuse, fails to provide the information, the employer may refuse to deal with the claim until such information is provided.

Clause 127: Determinations to be in writing

This clause requires all determinations to be in writing. A determination recorded with the use of a computer is to be taken as being in writing.

Clause 128: Shared liability

This clause provides that if an injury has arisen out of, or in the course of, service with more than one employer, the employer that has paid compensation may by action in a court of competent jurisdiction recover from the other employer, or employers, a contribution towards the amount of compensation paid proportional to the other employer's contribution to the injury suffered by the employee.

Clause 129: Subrogation of rights of actual employer to Fund

This clause provides that if, in relation to a default event, the Fund has become the employer of an employee because of clause 4(3) and has paid an amount of money in respect of an injury to the employee, the Fund will be subrogated to all of the actual employer's rights and remedies in relation to a policy of insurance or indemnity, or membership of a protection and insurance association.

Clause 130: Payment of compensation

This clause provides that an employer, having made an assessment under clause 29, 39, 40 or 41 that compensation is payable to a claimant, must pay the amount within 30 days of the assessment.

An employer that fails to comply with this provision will be liable to a penalty of 10 penalty points.

Subclauses 130(2) and (3) provide that if the amount due is not paid within the 30 day period, interest will be payable (at the rate specified by the Minister) on the amount payable, beginning at the end of the 30 day period.

Subclause 130(4) provides that the clause will not apply if the employer has been requested to reconsider its determination, or a proceeding in respect of such a determination has been instituted under Part 6.

Clause 131: Employee to notify other employers that compensation has been paid

This clause requires an employee who has claimed against more than one employer in respect of an injury to notify the other employer, or employers, claimed against, if the full amount of compensation is received from one of the employers. A person who fails to comply with this provision will be liable to a penalty of 5 penalty points.

Clause 132: Recovery of compensation payments

This clause provides that the claimant may recover an amount of compensation due as a debt..

Clause 133: Money paid for benefit of person

This clause requires that any money payable to a person under a legal disability must be paid to, or in accordance with the directions of, the Authority.

Subclause 133(2) provides that, subject to subclauses (4) and (5), any money held by the Authority for the benefit of a person must be invested in a manner permitted for the investment of trust money by a Commonwealth, State or Territory enactment.

Subclause 133(4) provides that the Authority may pay any money held by it for the benefit of a person, or in accordance with the directions of the person or apply the money in such manner as it thinks fit for the benefit of the person.

Subclause 133(5) provides that when a person stops being under a legal disability, the Authority must pay the money to, or in accordance with the directions of, the person.

Clause 134: Provisions applicable on death of beneficiary

This clause deals with the manner in which compensation monies due to a person, or monies or investments held on behalf of a person, are to be applied, if the person dies.

Subclause 134(1) provides that, subject to subclause (3), if a person dies before an amount of compensation is paid that amount will form part of the estate of the person.

Subclause 134(2) provides that, subject to subclause (4), if the Authority holds money or investments for the benefit of a person and that person dies, the money or investments will form part of the person's estate.

Subclause 134(3) provides that if a person to whom compensation is due dies intestate, and nobody is apparently entitled to claim the person's estate, the compensation will not be paid (ie it will be retained by the employer).

Subclause 134(4) provides that if the Authority is holding monies or investments in trust on behalf of a person who is under a legal disability (such as a prescribed child of a deceased seafarer) and that person dies intestate, if nobody is entitled to claim the person's estate, the Authority must pay the monies etc to the Commonwealth.

Subclause 134(5) provides that any of the provisions of this clause may be made inoperative in a particular case, as a result of a decision made on a review of a determination.

Clause 135: Assignment, set-off or attachment of compensation

Subclause 135(1) provides that an assignment of any compensation payable under the proposed Act will be void as against an employer or the Authority.

Subclause 135(2) provides that, if an employee or a dependant of a deceased employee owes money to an employer or the Authority, that amount must not be set off against an amount of compensation payable under the proposed Act.

Subclause 135(3) provides that, except as provided by the Child Support Act 1988 or the Family Law Act 1975, any compensation payable under the proposed Act will not be subject to attachment.

Clause 136: Recovery of overpayments

This clause enables the employer to take action for the recovery of overpayments of compensation.

Clause 137: Employees on compensation leave

This clause provides that an employee will not be entitled to be granted any paid leave, other than paid maternity leave, during a period when the employee is or was on compensation leave. Long service leave entitlements will continue to accrue in accordance with the applicable award, determination or certified agreement.

Clause 138: Double benefits

This clause provides that compensation will not be payable under the proposed Act if an employee or dependant of a deceased employee has received State workers' compensation in relation to the injury, loss or damage.

Subclause 138(2) provides that if, after the payment of compensation under the proposed Act, a person recovers State workers' compensation, the employer may recover the amount of compensation paid in a court of competent jurisdiction.

Subclause 138(3) provides that a claimant may be requested to provide a statutory declaration stating whether State workers' compensation has been paid for the injury, loss or damage to which the claim relates.

Subclauses 138(4) and (5) provide that if a claimant, without reasonable excuse, does not give a statutory declaration, the claimant's rights to receive compensation or to institute or continue proceedings under the proposed Act will be suspended. Compensation will not be payable in respect of the period of suspension.

Clause 139: Compensation where State compensation payable

This clause relates to the payment of compensation to employees who have recovered compensation, other than workers' compensation, under a law of a State or Territory specified by the Minister to be a law for the purposes of this clause.

Subclause 139(1) provides that the amount of compensation payable under the proposed Act to an employee or dependant of a deceased employee who has recovered State compensation is the amount that would otherwise have been payable, less the amount that has been paid under the specified law.

Subclause 139(2) provides that if an employer pays compensation to, or for the benefit of, anyone for an injury suffered by an employee or deceased employee and State compensation is later paid to, or for the benefit of, the same person for the injury, the person will be liable to pay to the employer the amount paid under the proposed Act or the amount of State compensation, whichever is less.

Subclause 139(3) provides that if a person owes money to the employer under this clause and another person holds on behalf of the debtor an amount of compensation payable under the proposed Act or State compensation or investments acquired out of such compensation, that person will be required to pay the amount owed by the debtor to the employer.

Subclause 139(4) provides that an amount paid to an employer under subclause (3) will, to the extent of the payment, be a discharge of the liability of the debtor to the employer and the liability of the person who held the amount of compensation or investment to the debtor.

Subclause 139(5) excludes from the reference to compensation paid under the proposed Act in subclause (2) a reference to compensation paid under subclause 29(5) (weekly benefits to dependant children of deceased seafarers).

Subclause 139(6) provides that this clause only applies to such amount of the State compensation that related to an injury, loss or damage for which compensation is payable under the proposed Act.

Clause 140: Notice of departure from Australia etc.

This clause requires a person who has been receiving weekly payments for incapacity under clause 31 for a period of three months or more and who intends to leave Australia, to notify the employer of that intention.

Subclause 140(2) requires the person to give notice to the employer specifying the date on which he or she proposes to leave.

Subclause 140(3) provides that if the person has already left Australia without having given notice under subclause (2), the person will be required to notify the employer within seven days of his or her departure from Australia.

A person who fails to comply with this provision will be liable to a penalty of 5 penalty units.

Subclause 140(4) requires a person who is absent from Australia for more than three months to notify his or her employer within seven days of the end of the period of three months (and at three monthly intervals thereafter) particulars of his or her residential address.

A person who fails to comply with this provision will be liable to a penalty of 5 penalty units.

Clause 141: Comcare may charge for officer's services provided to employer

This clause enables Comcare to charge an employer a prescribed fee for Comcare's services provided under clause 78 for assisting with a reconsideration.

Clause 142: Disallowable instruments

This clause provides that all notices made by the Minister under the proposed Act (paragraph 10(i)(b) and subclauses 44(3), 66(6), 130(3), 139(7)) will be disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.

Clause 143: Regulations

This clause gives the Governor-General the power to make regulations under the proposed Act.