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**Safety, Rehabilitation and Compensation and
Other Legislation Amendment Bill 2000**

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

Bills Digest
No. 111 2000-01

Safety, Rehabilitation and Compensation and Other
Legislation Amendment Bill 2000

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27 March 2001

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Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000

Date Introduced: 7 December 2000

House: House of Representatives

Portfolio: Employment, Workplace Relations and Small Business

Commencement: Royal Assent. However, the measures contained in the Bill have differing application dates which are dealt within the Main Provisions section of this Digest.

Purpose

To amend the *Safety, Rehabilitation and Compensation Act 1988* to:

- tighten the definition of 'injury' and 'disease' and restrict access to compensation,
- restructure deductions from benefits in relation to income from 'suitable employment',
- restrict access to compensation for non-economic loss before 1 December 1988,
- expand the regulatory regime for rehabilitation program providers,
- rationalise the categories of licence and the associated regulatory regime, and
- expand the formulae for calculating premiums and introduce regulatory contributions.

Also to amend the *Industrial Chemicals (Notification and Assessment) Act 1989* to:

- relax publication and regulatory arrangements for 'synthetic polymers of low concern',
- align primary and secondary notification for 'priority existing chemicals', and
- increase discretion in the public consultation processes for secondary notification.

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Background

Industrial Chemicals

The *Industrial Chemicals (Notification and Assessment) Act 1989* provides a uniform system for the assessment and regulation of industrial chemicals in Australia. The Act is administered by the National Occupational Health and Safety Commission (NOHSC) pursuant to the [National Industrial Chemicals Notification and Assessment Scheme \(NICNAS\)](#). The Act is designed to facilitate the assessment of chemicals in the context of work practices and threats to employees, the public and the environment. While the Commonwealth undertakes assessment, States and Territories are responsible for the control and sale of industrial chemicals.

NICNAS excludes chemicals which have uses that are solely dealt with under other schemes. A table showing regulatory arrangements for chemicals is at **Appendix 1**.

AICS

The Director of Chemicals Notification and Assessment is required to maintain the Australian Inventory of Chemical Substances (AICS). The AICS is used to register and promulgate information on the particulars of industrial chemicals which have been subject to assessment for at least 5 years (see below). It has a confidential and a non-confidential section. Where the publication of information regarding a chemical would substantially prejudice commercial interests, and where this prejudice outweighs the public interest in disclosure, *all* information regarding that chemical is kept in the confidential section. The inclusion of a chemical in this section is reviewed every 5 years and decisions regarding disclosure are reviewable by the Administrative Appeals Tribunal (AAT).

Ordinary Assessment and Reporting

Generally, it is an offence to knowingly or recklessly introduce a '*new industrial chemical*' without an assessment certificate.¹ A '*new industrial chemical*' is one that is not a '*listed industrial chemical*' on the AICS and, in the case of a synthetic polymer, meets the definition of a '*new synthetic polymer*'.² Assessment certificates may be obtained after an application, assessment and reporting process conducted by NOHSC.

Applications may be made to NOHSC providing a '*notification statement*' which addresses a range of prescribed matters regarding the properties of the chemical and the particular circumstances relating to its use, handling, storage and disposal.³ There follows an assessment process which seeks to identify the '*risk (if any) of adverse health effects, safety effects or adverse environmental effects*' of importation or manufacture of the chemical or its use, storage, handling or disposal based on relevant prescribed matters.⁴ The Director prepares an assessment report containing a summary of these matters and any reasonable recommendations regarding precautions or controls that should be imposed.⁵ The Director must, except for '*synthetic polymers of low concern*',⁶ prepare a full public

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report (ie, the assessment report excluding any 'exempt information')⁷ and a summary report (ie, basic details and an address from where the full report can be obtained).⁸

Following private consultation (where the applicant is given the reports and has the opportunity to request a variation) the assessment report is published by:

- giving a copy of the assessment report to the relevant public authorities,
- giving a copy of the full report to any persons identified by the Minister, and
- publishing the summary report in the *Chemical Gazette*.⁹

Priority Existing Chemicals

Similarly, it is an offence to knowingly or recklessly introduce a '*priority existing chemical*' without a certificate.¹⁰ Generally, 'priority existing chemicals' are 'industrial chemicals' which have been listed on AICS but in respect of which there are reasonable grounds to believe that the 'manufacture, handling, storage, use or disposal ... gives rise, or may give rise, to a risk of adverse health effects or adverse environmental effect'.¹¹

In general terms the application, assessment and reporting processes for 'new industrial chemicals' and 'priority existing chemicals' are the same. They follow similar courses but have some obvious differences based on the fact that the processes for 'priority existing chemicals' are instigated by government and not as a result of an application. Chemicals are declared to be 'priority existing chemicals' by the Minister, based on a recommendation by the Director. The declaration generally prompts an application and there follows an assessment and reporting process similar to that discussed above, but which is more public and has a narrower focus on the particular issues of concern. The content of the assessments is similar in scope, although the focus of assessments for 'priority existing chemicals' is determined by discretion and may be more narrow and specific.

Thus, relevant manufacturers and importers are required to provide information similar to, but more limited than, that contained in a 'notification statement'. The assessment process similarly seeks to identify the 'risk (if any) of adverse health effects, safety effects or adverse environmental effects' on a more confined or tailored list of prescribed matters. The Director prepares an assessment report on a similar basis and following private consultation (the report is checked by applicants who may request a variation)¹² and public consultation (the report is published and any persons may request a variation)¹³ this forms the basis of a final assessment report and summary report which are published.¹⁴

Secondary Notification

In addition to the offences and assessment processes discussed above, an importer or manufacturer is bound to comply with any requirements for secondary notification. This is an additional assessment process which occurs after the initial assessment and approval of a priority existing chemical or new industrial chemical if circumstances change.

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A range of circumstances are prescribed by the Act, and others may be prescribed by the assessment reports discussed above, which trigger a requirement to notify the Director.¹⁵ The circumstances prescribed in the Act include: a change in the chemical's function or use; a significant increase in the volume manufactured or imported; or a change in the manufacture process or additional information relating to health or environmental effects. If the Director is notified by an individual of a change in these circumstances, s/he must issue a public notice requiring all relevant manufacturers and importers to provide a secondary notification statement addressing a range of matters prescribed in the notice.

An assessment and reporting process follows which roughly corresponds with the assessment and reporting process for 'new industrial chemicals'. Significantly, this process applies equally to 'new industrial chemicals' and 'priority existing chemicals'. The *Explanatory Memorandum* concludes that this means that for 'priority existing chemicals' 'there is one procedure for the primary assessment and a completely different procedure following secondary notification'.¹⁶ But, as indicated above, the assessment and reporting procedures for 'new industrial chemicals' and 'priority existing chemicals' are very similar. The relevant differences occur on a case-by-case basis, by virtue of the more narrow and specific discretionary focus of assessments for 'priority existing chemicals'.

Safety, Rehabilitation and Compensation

Overview

The *Safety, Rehabilitation and Compensation Act 1988* (the Act) provides a framework for compensation and rehabilitation in relation to injuries and diseases that result in death, incapacity or impairment. It applies to employees under the age of 65 years of Commonwealth departments and authorities and of licensed corporations. It provides for:

- weekly incapacity payments
- lump-sum compensation for permanent impairment
- lump-sum compensation for non-economic loss
- lump-sum compensation and benefits for dependants of deceased employees, and
- provision for household and attendant care services and rehabilitation.

in respect of injuries and diseases connected with or arising in the course of work. Benefits are based on the degree and duration of incapacity. Compensation for economic and non-economic loss is based on the degree of impairment and extent of loss.

The Act is administered by Comcare under the auspices of the Safety Rehabilitation and Compensation Commission (the Commission). Broadly, Comcare provides safety, rehabilitation and compensation services to the Commonwealth. The Commission

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oversees the activities of Comcare and other service providers under the Act. It is also develops policy and determines the level of contributions and premiums for employers.

A Brief History of the Act

There is a long history of workers compensation law in Australia. The first general 'no fault' statutory compensation scheme for Commonwealth employees was introduced by the *Workmen's Compensation Act 1912*. The view, borrowed from Germany and the United Kingdom, was that employers, via state regulation, needed to provide an income safety net for injured employees. This scheme was revised and extended by the *Commonwealth Employees Compensation Act 1930* which survived until 1971 when it was replaced by the *Compensation (Commonwealth Government Employees) Act 1971*.

While the 1971 Act revolutionised workers' compensation in the federal field, the changes resulted in a significant growth in the costs to Government. In the Second Reading Speech for this Act, the Minister stated that '[b]etween 1976 and 1986, the Commonwealth's expenditure on workers' compensation increased by over 700 per cent, from \$25.04m to \$203.29m per annum'.¹⁷ The changes were also reflected in significant increases in the volume of merits review and judicial review of decisions made under the *Safety, Rehabilitation and Compensation Act 1988*.

The Act

Accordingly, the Act represented a second major revolution. In relation to individuals, it enlarged the range of benefits payable to employees and provided income based return to work incentives. Moreover, it made a 'very desirable increase of emphasis on rehabilitation and on provisions which relate compensation to a willingness to undertake rehabilitation'.¹⁸ In relation to agencies, it shifted the liability for contributions away from government as a whole to agencies based on their claims record, thereby inducing them to 'reduce costs by effective rehabilitation and occupational health and safety measures'.¹⁹ Significantly it strengthened the test for liability: whereas under the 1971 Act a worker needed only to demonstrate that employment was a 'contributing factor in the contraction of a disease', the Act required that s/he demonstrate it contributed 'in a material degree'.

It also allowed compensation for 'non-economic loss' or 'pain and suffering, a loss of expectation of life or a loss of the amenities or enjoyment of life' resulting from injuries.²⁰

Comparative Performance Monitoring

There has long been an interest among governments and scheme administrators in reducing the cost of workers compensation in Australia. Given its federal structure, there has also been an interest in increasing the consistency of entitlements and administration among each of the 'jurisdictions' in the Commonwealth and the States and Territories.

In 1993 the Productivity Commission produced a major report on these issues. *Workers' compensation in Australia* canvassed workers' compensation arrangements across all

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jurisdictions and their relationship with prevention incentives and practices.²¹ In 1995 the Productivity Commission produced a second report on related issues. *Work, Health and Safety* covered similar ground but focused more heavily on preventative measures.²²

In May 1997 the Heads of Workers' Compensation Authorities (HWCA)²³ released *Promoting Excellence – National Consistency in Australian Workers' Compensation* a paper with comparative statistics and recommendations on best practice standards.²⁴

In May 1999 the Workplace Relations Ministers' Council (WRMC) released *Comparative Performance Monitoring: Occupational Health and Safety and Workers Compensation*. In April 2000, WRMC released the second report in this series *Comparative Performance Monitoring: The Second Report into Australian and New Zealand Occupational Health and Safety and Workers Compensation Programs*. These reports aimed at informing all stakeholders 'upon how different approaches and activities influence outcomes in workplace safety and workers' compensation' in order to improve performance and consistency.

Key Reports on Workers Compensation Arrangements in Australia

<i>Year</i>	<i>Report</i>	<i>Author</i>
1993	<u><i>Workers' compensation in Australia</i></u> ²⁵	Productivity Commission
1995	<u><i>Work, Health and Safety</i></u> ²⁶	Productivity Commission
May 1997	<u><i>Promoting Excellence – National Consistency in Australian Workers' Compensation</i></u> ²⁷	Heads of Workers' Compensation Authorities (HWCA) ²⁸
May 1999	<u><i>Comparative Performance Monitoring: Occupational Health and Safety Arrangements in Australian Jurisdictions</i></u> ²⁹	Workplace Relations Ministers' Council (WRMC)
July 1999	<u><i>Comparison of Workers Compensation Arrangements in Australian Jurisdictions</i></u> ³⁰	Heads of Workers' Compensation Authorities (HWCA)
April 2000	<u><i>Comparative Performance Monitoring: The Second Report into Australian and New Zealand Occupational Health and Safety and Workers Compensation Programs</i></u> ³¹	Workplace Relations Ministers' Council (WRMC)

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State of Play

Over the past decade, the total workers compensation costs associated with the Act have been fairly stable but the premium rate and the premium pool have declined. The premium rate has fallen as a result of reduced claim frequency and reduced administration costs, balanced with other factors such as increases in the duration in claims for time off work.³² The premium pool has reduced partly as a result of these lower premium rates but also as a result of a decline in the number of 'customers' and 'employees' under the scheme. Various explanations have been given for this decline such as the growth of privatisation of government business enterprises and self insurance of statutory authorities (taking advantage of lower premiums)³³ and staff losses across the Australian Public Service.³⁴ More recently, other factors have emerged which may affect the burden on the scheme. Thus, greater allowance must be made for injuries connected with long-term diseases (following cases such as *Burch*³⁵),³⁶ and allowance must also be made for the GST.³⁷

These external pressures may be exacerbated by the inefficient operation of provisions in the Act. Currently, in the provisions dealing with calculation of premiums, no allowance is made for liability arising out of common law negligence actions (see below). Nor is there any explicit recognition of the future liability of agencies for claims in a given year.

These factors suggest that there may be a growing disparity between cost of compensation and administration and the value of the premium pool. Even if a number of the internal and external pressures are addressed, the fact that the pool of contributors is declining suggests that 'there is a question at some point as to what is the viable size of a scheme'.³⁸

Illustrative figures and detailed statistics are in **Appendix 2**.

Nexus with Occupational Health and Safety

There has long been a view that prevention is better than cure, or that the best approach to workers compensation is to focus on occupational health and safety. Thus, in considering the performance and viability of compensation arrangements, it is nearly always relevant to consider the performance of occupational health and safety arrangements.

The present Bill was introduced along with another Bill which amends Commonwealth occupational health and safety law. Reader's attention is drawn to the Bills Digest to the Occupational Health and Safety (Commonwealth Employment) Amendment Bill 2000.

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Main Provisions

Schedule 1

Schedule 1 amends the *Industrial Chemicals (Notification and Assessment) Act 1989*.

Items 2 and **49** rename the Director of Chemicals Notification and Assessment as the Director, National Industrial Chemicals Notification and Assessment Scheme (NICNAS).

Item 6 expands the category of 'synthetic polymers of low concern' to include certain 'polyesters'. Thus, while all 'synthetic polymers of low concern' must currently have a number average molecular weight that is greater than 1,000, these 'polyesters' are included regardless of their weight on the basis that they 'are considered a low risk to the health and the environment at any number average molecular weight'.³⁹

Item 10 redrafts section 19 which deals with the review of decisions to include chemicals in the confidential section of AICS. The redraft is intended merely to address uncertainty caused by the fact that the existing provision is 'difficult to read and therefore difficult to apply' and is 'not intended to change policy or procedure'.⁴⁰ While the language is clearer, it is difficult in the abstract to understand why this redraft is necessary.

Items 15-17 relax the publication requirements for reports on synthetic polymers of low concern. The Director is only required to publish the summary report, rather than the full report, in the *Chemical Gazette*. The rationale is that the full report is 'quite a lengthy document' and that 'gazettal is expensive for the regulatory agency, NICNAS'.⁴¹ Members of the public will still be able to have access to the full public report free of charge.

Item 31 relaxes the processes relating to secondary notification. Where the Director receives private notification regarding a change in prescribed circumstances, s/he will have discretion as to whether there should be a public process of secondary notification.

Item 40 aligns the secondary notification process for priority existing chemicals with the process for primary assessment. The issues are discussed above.

Schedule 2

Schedule 2 amends the *Safety, Rehabilitation and Compensation Act 1988*.

Part 1: 'Disease' and 'Injury'

Compensation and 'Injury and Disease'

As indicated, one of the objectives of the Act is to provide compensation for impairment.

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Disease

There has long been controversy regarding the test of causation in relation to diseases. To succeed under the Act, an employee must demonstrate that his or her work 'contributed in a material degree' to the contraction of the disease. To some degree, the issue of what constitutes a 'contribution' has been adequately resolved.⁴² However, there is still some uncertainty over what is added by the phrase 'in a material degree'.

In the Second Reading Speech to the Act, the Minister made this qualification:

An employee will not be required to show that his or her employment caused the disease, or even that it was the most important factor in the contraction of the disease. It is intended that the test will require an employee to demonstrate that his or her employment was more than a mere contributing factor in the contraction of the disease ... [I]t will be necessary for an employee to show that there is a close connection between the disease and the employment in which he or she was engaged.

In determining whether employment contributed in a material degree to the contraction of a disease in a particular case, regard would be had to whether the employment in which the employee was engaged carried an inherent risk of the employee contracting the disease in question and whether some characteristic or feature of the employment tended to cause, aggravate or accelerate the disease.⁴³

These comments were recently considered by the AAT in *Bessey and Australian Postal Corporation*. Senior Member Peter Bayne noted 'all that may be said is that a "material" contribution is one that is more than a "mere" contribution, but less than the "most important factor in the contribution"'. This does not take the matter very far'.⁴⁴

Injury

Another important issue relates to the distinction between 'diseases' and 'injuries'.

The 1971 Act defined an injury as any physical or mental injury, including aggravation, acceleration or recurrence but *not* a disease. A disease was defined to include any physical or mental ailment, disorder, defect or morbid condition. Essentially, the distinction was between conditions associated with events at work and completely pre-existing conditions. In theory, *any* injury was subject to compensation but *no* disease could be compensated.

By contrast the Act defines 'disease' narrowly as any 'ailment' to which employment has contributed 'in a material degree'. An 'ailment' is any physical or mental ailment, disorder, defect or morbid condition. Significantly, an 'injury' is defined to include a 'disease' *and any injury other than a 'disease'*, arising out of, or in the course of, the employment. It is also defined to include an aggravation of any injury other than a disease.

The High Court and Federal Court have accepted that an employee should be compensated for an injury at work, partly arising out of an underlying disease, provided the injury is *not an inevitable consequence of the disease* (in the ordinary sense of those terms).⁴⁵ Thus in *Zickar v MGH Plastic Industries*, an employee was awarded compensation under the NSW

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legislation⁴⁶ for a sudden rupture of blood vessels arising from a pre-existing condition.⁴⁷ In *Australian Postal Commission v Burch*,⁴⁸ an employee was able to gain compensation under the Commonwealth Act for a stroke notwithstanding that there may have been doubt as to whether there was a close connection with the relevant activities, characteristics or conditions of employment. Once it was accepted that the stroke was not an inevitable result of an ailment or disease, in the ordinary sense, then it could be said that the stroke arose by virtue of an injury: '[t]here was no need to establish any other connection between the employment and the stroke'.⁴⁹ The general approach in *Zickar* and *Burch* was confirmed by the High Court in *Kennedy Cleaning Services Pty Limited v Petkoska*.⁵⁰

Clearly, the approach in these cases has a significant impact on the operation of the Act. Arguably, it undermines the distinction between 'disease' and 'injury' and the need to demonstrate any 'close connection' between work and the disease (or resulting injury).

However, the approach in *Burch* may have a far wider impact on the operation of the Act. In *Burch* Northrop J focused on the disjunction between 'ailment' and 'disease' and not merely on the question of whether the stroke was the inevitable consequence of an underlying condition. The definition of 'disease', he noted, was limited to 'compensational diseases, namely those that were contributed to in a material degree by the employee's employment' and that 'ailment' was closer to the ordinary meaning attributed to 'disease'.

Thus, *any* 'ailment' which was not a 'disease' might be compensable because it constituted an 'injury'. In this sense, it might be argued that even if the stroke had been *inevitable*, the fact that it occurred while the employee was at work, and was not contributed to in a material degree by the employee's employment, *might* mean that it constituted an 'injury'. Significantly, Northrop J said: 'the draftperson of the [1988 Act] did not appreciate the effect of the definition of the word 'injury' or for that matter the word 'disease' when used in the Act' and suggested that peculiar conclusions were 'symptomatic of what flows from giving very different meanings to words in an Act to the meanings normally associated with those words. Difficulties and misunderstandings must, of necessity, arise'.⁵¹

Reasonable Disciplinary Action

An 'injury' does not include injury, disease or aggravation caused by 'reasonable disciplinary action taken against the employee or failure by the employee to obtain a promotion, transfer or benefit in connection with his or her employment'.⁵² Essentially the phrase 'reasonable disciplinary action' refers to relatively formal disciplinary action. It may not include preparatory counselling seeking to establish grounds for more formal action.⁵³ Nor may it include performance appraisals at least where there is a prospect of dismissal.⁵⁴ Thus, an 'injury', such as a 'nervous breakdown', following a performance appraisal or informal counselling would be compensable.

The 1996 Bill

In December 1996 the Government introduced amendments which sought to tighten these provisions. Schedule 2, Part 1 of the Industrial Relations Legislation Amendment Bill

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1996 sought to define 'disease' and 'injury'. The approach is similar to the approach in this Bill. However, there are differences which are discussed below in Concluding Comments.

The 1996 Bill was referred to the Senate Economics Legislation Committee and opposition amendments were proposed. It did not pass and lapsed in 1998.

This Bill

Items 2–4 tighten the current definitions of 'disease' and 'injury'. **Proposed section 5A** expands the definition of 'disease' to reflect the original intention behind the Act and the comments made in previous and subsequent cases regarding the work connection. **Proposed sections 5B** and **5C** seek to clarify relationship between 'injury' and 'disease'.

These provisions distinguish between 'disease', in the ordinary sense of the term, and '*compensable* disease' in the sense of a disease closely connected with employment. The definition of 'injury' will not to include 'diseases' *or* 'compensable diseases'.

Proposed section 5A provides that ailments are not compensable unless there is a *close connection* between the ailment and the employee's employment. In assessing whether there is a close connection, various matters may considered, including the duration of the employment, nature of the work tasks, the existence of any medical predispositions, unrelated activities of the employee and any other matters affecting the employee's health.

Proposed paragraph 5B(1)(b) seeks to ensure that ailments cannot otherwise be treated as injuries for the purpose of the Act. **Proposed paragraph 5B(1)(c)** provides that an aggravation of an ailment is not an injury. **Proposed section 5C** prevents employees from claiming as an 'injury' any incident or event occurring in the course of work which is 'a natural progression of the disease'.

The effect of these provisions is mixed. It is unclear whether the addition of 'close connection' adds anything to the definition of 'disease', given the comments in *Bessey*. It seems clear that the distinction between 'diseases' and 'compensable diseases' will answer any speculation on the treatment of injuries that *are* an inevitable consequence of ailments. However, it is unclear how the reference to 'a natural progression of the disease' will affect the treatment of injuries that *are not* an inevitable consequence of the disease. Arguably, many injuries that are not inevitable, and are therefore compensable under the Act, will nevertheless be capable of being viewed as a natural progression of a disease. Thus, many injuries that are currently compensable will not be compensable under these amendments. It all depends upon what may be included within a 'natural progression' of a disease.

In addition, **proposed section 5B** expands the exclusions relating to 'reasonable disciplinary action' to include performance appraisals, counselling and suspension action.

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Part 2: Indexation

Item 13 adjusts the provisions dealing with increases and reductions in compensation payable under the Act. Currently, compensation payable to an employee is determined as a percentage of the normal weekly earnings for the relevant class of employees. This is adjusted to take account of changes in the law or awards, orders or determinations. **Proposed subsections 8(9B)–(9D)** seek to ensure that where employees leave the Commonwealth regime, their payments continue to be indexed to changes in the normal weekly earnings that apply to the position they held at the time of their injury.

Part 3: Amounts of Compensation

Benefits and 'Suitable Employment'

As indicated another objective of the Act is to provide weekly benefits for incapacity. In determining the entitlements available to employees, key issues are deductions for 'suitable employment' and the duration for which compensation is payable.

'Suitable Employment'

A deduction is made for any income that an employee is 'able to earn' in 'suitable employment'.⁵⁵ The definition of 'suitable employment' has two limbs:⁵⁶

- if the employee was a Commonwealth employee at the time of the injury,⁵⁷ then 'suitable employment' is 'suitable employment by the Commonwealth', or
- otherwise⁵⁸ 'suitable employment' is 'any employment (including self-employment)'.

This definition has been given a literal interpretation. Thus, in *Re: Chenhall and Comcare* the AAT held that the applicant,⁵⁹ for whom 'suitable employment' could not be found within the Commonwealth, was able to find similar paid work in the private sector without losing any statutory compensation. The Federal Court upheld this decision on appeal. While Heerey J recognised that the applicant was, in laypersons terms, entitled to 'double dip' he commented that '[i]f the intention had been to deduct from compensation entitlements *all* actual earnings, that object could have been achieved very simply'.⁶⁰

Duration of Compensation

Compensation is payable at the employee's actual rate of earnings for the first 45 weeks during which s/he is incapacitated. After that time, a reduced amount of compensation is payable which tapers according to the percentage of normal weekly hours for which the employee is actually employed.

The provisions operate on the basis of weeks and do not accommodate part-weeks. Arguably, they therefore disadvantage employees in graduated return to work programs. For example, if an employee works for 2 days a week, while s/he receives compensation

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for 45 weeks, s/he only receives it for the 3 days a week that s/he is incapacitated. While the employee receives income and income support for a full 45 weeks, s/he effectively only receives 3/5^{ths} of the compensation payable to other employees.

This Bill

Items 14 and 15 strengthen the deductions for 'suitable employment'. The deductions will take account of any income derived from 'any employment (including self-employment)'. In addition, the provisions are restructured so that they focus on normal weekly hours rather than weeks per se. Thus, an employee receives a nominal 'pool of compensation' which is equivalent to 45 times the normal weekly hours that s/he would have worked but for the incapacity. S/he is able to draw hours from that 'pool of compensation' for the hours that s/he is prevented from working until the pool is exhausted.

Part 3 commences 6 months after Royal Assent.

Part 4: Compensation for Non-Economic Loss before 1 December 1988

Statutory Claims

On its face the Act does not permit employees to claim compensation for injuries occurring before 1 December 1988 if compensation was not payable under the 1971 Act.⁶¹ On this basis, an employee who suffered non-economic loss prior to 1 December 1988 would *never* be able to claim compensation, because this was not covered by the 1971 Act. However, employees have been able to claim compensation for non-economic loss arising before this date provided the injury or disease was of a type recognised by the 1971 Act. The reasoning is that compensation was payable for injuries under general provisions in both the 1971 Act and the Act. The provision for non-economic loss was merely an incident, introduced by the Act, of the compensation otherwise available for the injury. Thus, the *injury* was compensable under the 1971 Act albeit that the *form of compensation*, for non-economic loss, was not recognised under the 1971 Act.⁶²

This Bill

Item 21 limits statutory claims for non-economic loss to permanent impairments occurring on or after 1 December 1988. Claims for impairments arising before that date are only valid if an application for compensation is made before the introduction of the Bill. The purpose is clearly to reverse the liberal interpretation given to the provisions relating to non-economic loss which has allowed claims for impairments before 1 December 1988.

This amendment would seem to remove access to all remedies for non-economic loss arising before 1 December 1988. As indicated, common law negligence actions for non-economic loss are not barred under the Act. But, given that 12 years has expired (since 1 December 1988), an extension of the limitations periods is unlikely and therefore the

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power of an employee to elect to institute common law proceedings for non-economic loss is of no real significance.⁶³

Common Law Negligence Actions

The Act was intended to operate as a complete code for compensation claims. When it was introduced, the then Government considered that the common law negligence action was 'a costly, inefficient and inappropriate mechanism for compensating injured workers'.⁶⁴ The measures in the previous legislation were strengthened so as meet and exceed the remedies available under the common law. Moreover, it was thought that the measures would 'make redundant any need for redress to the courts'. Accordingly, actions against the Commonwealth (and fellow employees) were to be barred. In addition, actions against third parties would be discouraged, to be pursued by Comcare in place of the employee.⁶⁵

There are three 'exceptions' to this bar:

<i>Actions for non-economic loss</i>	The Act expressly permits employees to institute private actions rather than pursue statutory compensation. The exception was introduced into the Bill for the Act by a Government amendment in the Senate. ⁶⁶ No explanation was given in the Supplementary <i>Explanatory Memorandum</i> or in debates in Parliament. However, one apparent purpose of the exception is to recognise that courts might provide more generous damages than those which are available under the Act. In this context, the Act sets a limit of \$42,910 on statutory compensation and \$114,427 on common law damages. ⁶⁷ It is worth noting that the current calculation of premiums (below) does not expressly take account of the liability of agencies in damages for non-economic loss.
<i>Actions against third parties</i>	The Act implicitly allows employees and dependants to institute actions against those parties that are liable to pay damages but are not covered by the Act ⁶⁸ or are not a direct employer of the employee. ⁶⁹ Thus, an employee of one authority may commence an action against another authority if they suffer an injury at the hands of that authority.
<i>Actions arising before 1 December 1988</i>	In <i>Georgiadis v Australian and Overseas Telecommunications Corporation</i> , ⁷⁰ the High Court, by a slim majority, held that the statutory bar in the Act, insofar as it related to injuries or losses occurring before 1 December 1988, was an 'unjust acquisition of property' for the purposes of the <i>Constitution</i> and was invalid. ⁷¹ In <i>Commonwealth v Mewett</i> , ⁷² the Court indicated that this reasoning could apply to all causes of action arising before 1 December 1988 even those causes of action that had been barred under State and Territory limitations legislation. ⁷³

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Treatment of Statute Barred Actions

Despite being 'exceptions', these actions, and any damages awarded, are still covered by the Act. Plaintiffs must give notice where an action is commenced for non-economic loss, by dependants or against third parties.⁷⁴ Generally, compensation is not payable where damages are recovered.⁷⁵ This excludes damages for non-economic loss following an election by the employee,⁷⁶ but includes damages recovered in actions against third parties.⁷⁷ Any compensation that is *paid* must be refunded from the damages⁷⁸ and any compensation that is *payable to dependants* must also be refunded to Comcare.⁷⁹

The Act permits Comcare to take over actions against third parties which an employee or dependant has failed to institute or has discontinued an action.⁸⁰ Having done so, Comcare is liable for costs, but it may prosecute or settle the action as it sees fit and it may require the employee or dependant to cooperate with the litigation. Compensation is deducted from damages awards and any residue is payable to the employee or dependant. In addition, the Act permits Comcare to interpose itself between a plaintiff and defendant so that damages are payable to Comcare, to be remitted, less any compensation payable, to the plaintiff.⁸¹

Thus, an employee is able to claim compensation *or* pursue a common law negligence action for non-economic loss arising before or after 1 December 1988.

Actions for Non-Economic Loss

Item 68 empowers Comcare to take over defences against common law negligence actions by employees for non-economic loss on behalf of certain employers. (These employers are those who have paid premiums in relation to claims for non-economic loss.) **Proposed section 52A** operates in a similar way to section 50. Thus, Comcare is empowered to take over litigation and is required to assume responsibility for costs. Likewise, Comcare is obliged to meet any and all liabilities associated with damages. **Items 69** and **75** support this power. Thus, the associated costs are factored into the 'estimated liability component' and 'estimated management component' of premiums (**proposed subsection 97A(3)**) (and provision is made for special premiums for the period to 1 July 2001 (**proposed section 97C**)) and the functions of Comcare are expanded (**proposed paragraph 69(ea)**).

Note that if Comcare does not take over an action for non-economic loss on behalf of a licensee, the licensee agency retains its own liability for damages awards or settlements.

Terminology: Proceedings v Claims

Items 61–65 amend existing terminology to replace references to 'actions' or 'proceedings' in relation to dependants and third parties with references to 'claims'.

Proposed subsection 45(5) clarifies that an employee who elects to institute a common law action in relation to non-economic loss may also or alternatively pursue an outcome by way of negotiation and settlement or other informal processes.

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The terminology used is drafted so as to distinguish between formal and informal legal avenues. Broadly, in legal parlance, the term 'claim' is associated with the assertion of a legal right or cause of action (which may be resolved by negligence, settlement or civil action) whereas 'action', and 'proceeding', is associated with formal court proceedings.⁸²

It is worth noting the use of terminology in relation to actions for non-economic loss, claims by dependants and claims against third parties. It is clear that the drafting is aiming to strike a balance among the use of terms such as 'claim', 'action' and 'proceeding' which indicates where relevant a distinction between formal and informal legal avenues.

In relation to dependants and third party claims, the purpose of using 'claims' instead of 'proceedings' is apparently 'to allow the negotiation of common law matters where a claim for damages has been made, whether or not formal proceedings have been instituted'.⁸³ In relation to non-economic loss, 'action' denotes both formal *and* informal proceedings: an 'action for non-economic loss' is defined as 'any action (whether or not it involves the formal institution of a proceeding)' to recover damages for non-economic loss (**item 57**). This explains the proviso in **proposed subsection 45(5)** that the election to institute an 'action' or 'proceeding' for non-economic loss does not prevent the employee doing any prior thing which 'constitutes an action for non-economic loss'. It is intended to clarify that the employee may negotiate a settlement 'before or in place of formal proceedings'.⁸⁴

It is unclear why a consistent distinction is not made between 'claim' and 'action' for non-economic loss, in section 4, subsection 45(1) or **proposed subsection 45(5)**.

Part 5: Compensation for Persons Aged over 63

Subsection 23(1) provides that income maintenance benefits are not payable to persons aged over 65. Subsection 23(1A), inserted by the Public Employment (Consequential and Transitional) Regulations 1999,⁸⁵ provides an exception to this rule: benefits may be paid to persons who are injured after having reached 63 years for a maximum of 104 weeks.⁸⁶

Section 30 provides that lump-sum payments must be made where the benefits are \$50 per week or less. The formula for calculating the lump-sum is detailed in subsection 30(3). In part it is based on the proportion of years during which benefits would have been payable, assuming that benefits are not payable when the person reached 65 years.

Proposed subsection 30(3) seeks to adjust this formula to allow for situations where benefits are payable to persons covered by subsection 23(1A).

Part 6: Rehabilitation Program Providers

Section 34 empowers Comcare to approve persons as rehabilitation program providers. The regime is currently dealt with by administrative guidelines. **Part 6** expands upon the current statutory regime. Generally, a person must apply for approval and renewal of

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approval as a rehabilitation program provider (**proposed sections 34A-C and 34J-K**), however, Comcare may unilaterally approve providers and extend such approval on an ad-hoc basis in response to urgent need (**proposed section 34H**). Comcare is empowered to determine approval criteria and operational standards: approval criteria relate to matters including qualifications, probity and financial arrangements; standards relate to matters including effectiveness, availability and cost (**proposed sections 34D and 34E**). If an applicant/provider complies with the criteria and is likely to comply with the standards, their application must be approved/renewed (**proposed sections 34F and 34L**). Comcare has the power to revoke approval if a provider fails to meet the conditions or criteria (**proposed section 34Q**). Decisions to refuse or revoke are reviewable by the AAT.

Part 6 commences on a day to be fixed by Proclamation or six months after Royal Assent.

Part 7: Dependants

In order to succeed in a dependant's action the dependant must ordinarily demonstrate that the deceased employee had a cause of action that would have succeeded if his or her death had not ensued.⁸⁷ It is unclear whether these actions are affected by the statutory bar on common law negligence actions. Arguably, a dependant may currently only succeed in relation to a third party action or a cause of action arising before 1 December 1988.

The *Explanatory Memorandum* to this Bill suggests that the Parliament had originally intended that 'dependants of deceased employees should be allowed to sue the Commonwealth, [etc] at common law for the death of an employee'.⁸⁸ However, this is not stated in the *Explanatory Memorandum*, Second Reading Speech, or Debates for the 1988 Bill. As indicated, the then Labor Government's policy was that the common law provided an inefficient and inappropriate mechanism for workers' compensation. While the Second Reading Speech did associate the statutory bar with employee's actions,⁸⁹ it did not dissociate the bar from dependant's actions. Moreover, the Second Reading Speech⁹⁰ and the *Explanatory Memorandum*⁹¹ only discussed dependants in terms of third party actions.

Proposed subsection 44(3) clarifies that the statutory bar does not prevent dependants from commencing a dependant's action (against third parties *or* the Commonwealth, etc.).

Part 8: Licences

In 1992 the Act was amended by the *Commonwealth Employees (Miscellaneous Amendments) Act 1992*. The amendments provided for self-administration, or the transfer of liability for determination and payment of claims from Comcare to licensed authorities (Part VIIIA) and certain corporations (Part VIIIB).⁹²

Authorities may have three classes of licence:

- *class 1* allows the agency to self-insure, with the claims being managed by Comcare,
- *class 2* allows it to manage its own claims, with a premium being paid to Comcare and

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- *class 3* allows it to perform both functions.

Corporations may have two classes of licence:

- *class a* allows the agency to self-insure, with claims being managed by a Comcare subsidiary,
- *class b* allows it to self-insure and manage, or outsource, its claims.

Proposed Part VIII provides for a single licence, for authorities and corporations, of varying scope, based on the agency accepting responsibility for self-insurance and/or claims management, and conditions imposed by Comcare. Many of the measures in the Bill replicate provisions in the existing licensing regime. However, there are a number of potentially significant differences which are listed in **Appendix 3**.

Part 8 commences on a day to be fixed by Proclamation or six months after Royal Assent.

Part 10: Premiums, Regulatory Contributions, etc

Premiums

Under the 1971 Act, compensation liabilities in a given year were met with appropriations from the Consolidated Revenue Fund. The Act introduced a 'fully funded' scheme in which (unlicensed) agencies paid 'premiums'⁹³ to Comcare and, from 1 July 1989 Comcare assumed liability for all compensation costs, present and future, for injuries sustained by employees in unlicensed agencies.⁹⁴ It was 'fully funded' in the sense that premiums in a given year were calculated 'so that they cover the full cost of injuries sustained during that year over the life of those claims'.⁹⁵ This had the benefit of making agencies 'financially accountable for compensation costs' with the virtue of providing them with 'incentives to develop effective accident prevention and rehabilitation strategies'.⁹⁶

Premiums are calculated by the Commission and contain three components:⁹⁷

- a 'prescribed amount', based on the 'estimated liability' of an agency for the number of injuries estimated to occur during that financial year and the 'estimated administrative costs' associated with the estimated number of claims during that financial year;
- a 'bonus amount', or a reduction in the 'prescribed amount' based on:
 - the number of claims and amount of compensation paid in the previous year, and
 - rehabilitation and occupational health and safety programs provided by the agency;
- a 'penalty amount', or an addition to the 'prescribed amount', on a similar basis.

Item 75 replaces existing provisions dealing with premiums and regulatory contributions. The regime is largely the same as the current regime, but there are various differences.

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The key difference is that responsibility is transferred from the Commission to Comcare. Thus, whereas the Commission currently has responsibility for estimating premiums, Comcare will have this responsibility (**proposed section 97**) under guidelines from the Commission (**proposed paragraph 97A(1)(a)**). Similarly, whereas decisions by the Commission regarding premiums are reviewable internally by the Commission and externally by the Minister, decisions will be reviewable internally by Comcare and externally by the Commission (**proposed sections 97J and 97K**). (**Item 69** amends the provision describing the functions of Comcare to reflect these additional responsibilities.)

Other significant differences are listed in **Appendix 4**. Broadly, in calculating premiums, the new regime replaces 'estimated liability' with an 'estimated liability component' and 'estimated administrative costs' are distributed between an 'estimated management component' and 'regulatory contributions'. Account is taken of future liabilities and express provision is made for liabilities and costs associated with non-economic loss.

It is worth noting that regulatory contributions relate to administrative costs associated with performance of functions by Commission and Comcare under *both* the Act and the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

Relationship with CRF

Strictly, the scheme is funded by appropriations from the Consolidated Revenue Fund (CRF). Practically, the payments and costs are met from premiums. Thus, any premiums received by Comcare are paid into an account held in accordance with the *Commonwealth Authorities and Companies Act 1997* (CAC Act) and an equal amount is paid into CRF. Any payments made or costs incurred by Comcare are appropriated out of CRF. This practical conclusion is reinforced by the fact that the limit of appropriations is the notional balance of invested premiums. Thus, the limit of appropriations is worked out on the basis of 'premiums received' plus 'notional interest' minus 'previous payments'.⁹⁸

In a *loose* sense, these arrangements may be underwritten by an appropriation from CRF. Parliament may, *at its discretion*, appropriate monies payable to Comcare for the payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by Comcare in accordance with the Act, etc.⁹⁹

Proposed section 90A removes the requirement to recycle premiums through CRF (they are simply paid into an account held in accordance with the CAC Act). **Proposed section 90C** recreates a similar limit on drawings based on 'premiums received' plus 'notional interest' minus 'previous payments'. In a *formal* sense, these arrangements are underwritten by a general appropriation which is made in **proposed subsections 90C(2)**¹⁰⁰ and **97N(2)**.¹⁰¹

Commencement

Part 10 commences on 1 July 2001.

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Concluding Comments

Injury and Disease

The 1996 Bill

As noted above, similar amendments were proposed in the Industrial Relations Legislation Amendment Bill 1996. This Bill was hotly debated in the House of Representatives and Senate and, as indicated, could not be passed before the election in 1998.

In that Bill, while there was no disjunction between 'disease' and 'compensable disease', a clear attempt was made to confine the definition. Thus, 'disease' was defined to be an ailment or aggravation to which employment contributed in a 'significant degree'. 'Significant degree' was defined to mean '*substantially more than a material degree*'. In determining this issue, regard was required to be given to whether the employee 'would have contracted, or suffered the aggravation of, the ailment in spite of the employment'. The same matters could be considered in making this assessment. In relation to 'injury' the exclusions were expressed in terms of 'reasonable managerial or administrative action'. Such action included reasonable action to 'reclassify, transfer, demote, discipline, counsel, or redeploy the employee or bring about the cessation of the employee's employment', or a reasonable decision 'not to promote, reclassify, transfer, or grant leave of absence' or 'not to provide, or to discontinue, a benefit'.

To some extent, the 1996 amendments mirror the effect of the amendments in this Bill. However, the 1996 amendments have a more restrictive operation and, because they maintain the reliance on 'disease' in the definition of 'injury', it is unclear whether they address the situation arising out of the construction of that term in *Burch*. Thus, whatever restrictions were placed on the definition of 'disease', an employee might be eligible for compensation on the basis that an 'ailment' constituted an 'injury'. On the other hand, the strict treatment of 'disease' clearly imports the 'natural progression' approach into the definition of 'disease'. It might be argued that this indicates that ailments which occur as the natural progression of some disorder are not to be compensated either as 'diseases' or 'injuries'.

The Context

It should be noted that the approach in the 1996 Bill reflected recommendations put forward in a report by the Heads of Workers' Compensation Authorities.¹⁰² The report recommended that employment should be a 'significant contributing factor' rather than a 'material factor' in the injury. It also noted that, in relation to stress-based injuries, 'some systems have experienced a significant number of claims where the claimed work stress resulted from disciplinary action taken in respect of the person's work performance'. It recommended that claims not be compensable when they concern reasonable action taken in a reasonable manner by an employer relating to discipline, non-promotion, termination, matters relating to work and the workplace, determining or managing a claim.¹⁰³

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The Second Reading Speech stated that the redefinition of 'disease' was necessary due to judicial interpretation of the phrase 'material degree' as meaning pertinent or likely to influence, a situation which had:

progressively extended the liability of employers to cover a growing number of claims for conditions where work is only a minor contributing factor. This distorts the fundamental objective of workers' compensation which is to provide for losses stemming from occupational injury.¹⁰⁴

The Speech also noted that the Bill sought to 'prevent compensation claims being used to obstruct legitimate management action.'¹⁰⁵ The proposed amendment was primarily aimed at addressing stress related claims which were considered to have weighed so heavily on the workers compensation scheme as to have 'grave implications for the future sustainability of the scheme'.¹⁰⁶ The Shadow Minister for Industrial Relations at the time issued a press release stating that 'at a time when the Government is slashing public service jobs and services, and placing public servants under greater stress, it intends to legislate "stress" claims out of existence.'¹⁰⁷ For more information see [*Bills Digest No. 86 1996-97*](#).¹⁰⁸

Premiums and Regulatory Contributions

In the Background section above it was suggested that there may be inadequacies or inefficiencies in the operation of the premium system. The causes of these shortcomings might include factors such as the need to make allowance for injuries connected with long-term diseases, increasing duration of claims for time off work and allowance for the GST. It may also include the need to make allowance for the shrinking pool of contributors.

A number of measures in the Bill seem to relate to this issue. As noted above, measures address such issues as estimates of future liability, liabilities and costs associated with actions for non-economic loss and a guaranteed underwriting of liabilities from the CRF.

Arguably, inadequacies and inefficiencies could arise as a result of internal pressures, such as a failure to take account of liability for damages under common law negligence actions in the calculation of premiums. Alternatively, they could arise as a result of external pressures, such as the shrinking pool of contributors. Either way, whether the measures resolve the burden on the premium system and the extent to which the solution relies on the guaranteed underwriting of liabilities from the CRF are issues worth monitoring.

Third Party Actions and the No Compensation Rule

In the Background, it was also noted that common law negligence actions are generally barred but that certain exceptions exist in relation to actions for non-economic loss, third party actions and dependants actions. Also, it was noted that where damages have been recovered in such actions, no compensation is payable under the Act.

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However, the 'no compensation rule' does not apply in two circumstances. First, where an employee receives damages from a common law negligence action for non-economic loss. (It was suggested above that the purpose was to recognise that the courts might provide more generous damages than available under the Act.) Second, where an employee or dependant receives damages from a third party common law negligence action instituted or taken over by Comcare. (The apparent purpose is to recognise that the financial burden of the statutory scheme may be spread beyond scheme participants to other parties and, given the fact that the residue of damages awards are paid to employees and dependants, to recognise that the courts might provide more generous damages as above.)

Given these considerations, it is unclear why the Act penalises an employee or dependant who is pursuing a third party actions. Such actions have the potential to benefit the plaintiff as well as providing a public benefit to the participants in the statutory scheme.

Historical Focus

It is also worth noting that the 'no compensation rule' has an inflexible historical aspect. Whereas compensation for economic loss is *payable* where damages have been paid under the third party exception above, any compensation that *has been paid* must be refunded.

Concluding Comments

The Commonwealth Public Sector Union has argued:

Overall the performance of the Commonwealth workers' compensation and occupational health and safety arrangements is one of below average cost and improving results. There is no case based on these results for reducing benefits or undertaking radical changes to OHS arrangements at employer or workplace levels.¹⁰⁹

In particular in relation to the proposed changes to the definition of 'injury' and 'disease' and 'reasonable disciplinary action', the CPSU has argued that '[t]he evidence provided to this point does not establish that there is a serious financial problem for the workers' compensation scheme emerging from the current definition of injury and disease' and that 'there would seem to be no need for the changes' that would effectively limit the number of employees who are entitled to compensation payments for disciplinary action.¹¹⁰

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Appendix 1

Assessment of Chemicals (At a Glance)¹¹¹

	<i>Industrial Chemicals</i>	<i>Agricultural & Veterinary Chemicals</i>	<i>Medicine & Medicinal Products</i>	<i>Food Additives</i>
AGENCY	National Industrial Chemicals Notification & Assessment Scheme (NICNAS) within NOHSC	National Registration Authority (NRA) for Agricultural and Veterinary Chemicals	Therapeutic Goods Administration (TGA)	Australia New Zealand Food Authority (ANZFA)
MINISTRY	Employment, Workplace Relations & Small Business	Agriculture, Fisheries and Forestry	Health & Aged Care	Health & Aged Care
SCOPE	Assessment only, not registration based	Assessment & Product Registration	Assessment & Product Registration	Assessment & Product Registration
RELEVANT LEGISLATION	Industrial Chemicals (Notification & Assessment) Act 1989	Agricultural & Veterinary Chemicals (Code) Act 1994 Agricultural & Veterinary Chemicals Administration Act 1994	Therapeutic Goods Act 1989	Australia New Zealand Food Authority Act 1994. Food Standards Code
ABOUT THE CHEMICALS	Industrial chemicals are varied and cover, for example, dyes, solvents, adhesives, plastics, laboratory chemicals, paints, as well as chemicals used in cleaning products and cosmetics & toiletries.	Agricultural products include chemicals which generally destroy /repel pests or plants. Veterinary products are used to prevent, diagnose, or treat diseases in animals.	Therapeutic goods include prescription and non-prescription (OTC) medicines. OTCs include complementary medicines (herbals, vitamins, minerals and homeopathic preparations), and some sterilants and disinfectants.	Chemicals are added to food for a number of reasons, for instance as a processing agent, preservative or as a flavouring or colouring. These are known as food additives.

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Appendix 2

Figure 1.1: Total Premium Contributors/'Customers' in Comcare Scheme 1990-2000

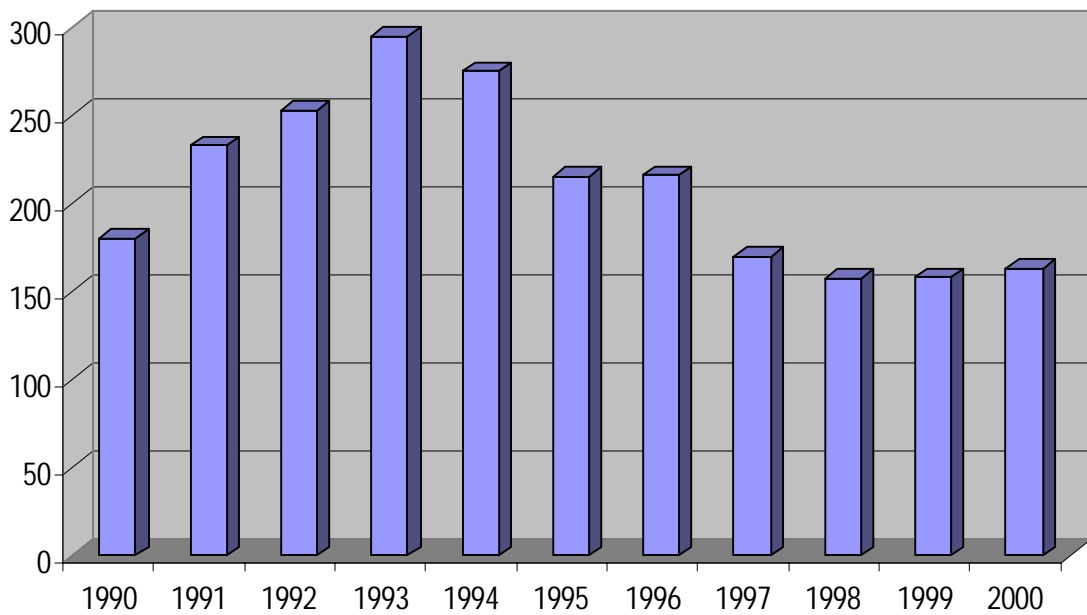
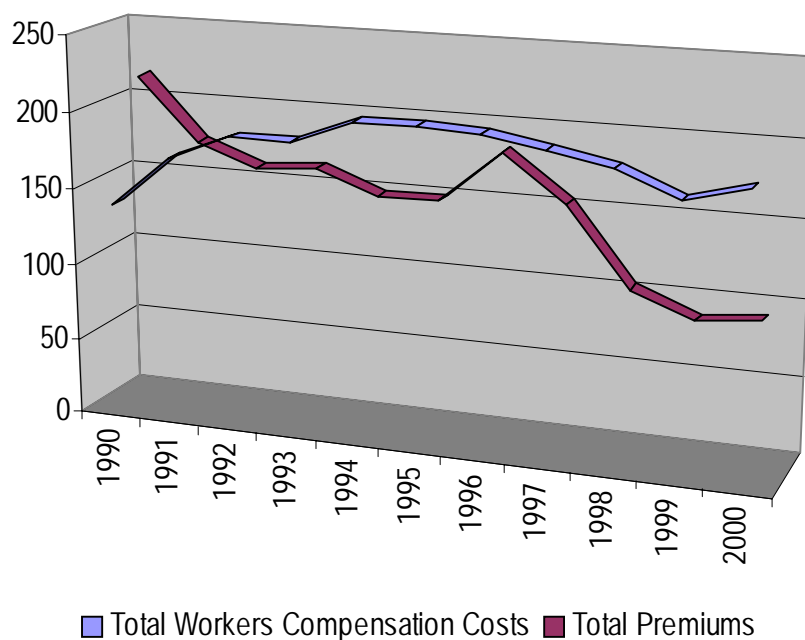


Figure 1.2: Total Workers Compensation Costs and Premiums Reported by Comcare 1990-2000 (\$m)



■ Total Workers Compensation Costs ■ Total Premiums

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Figure 1.3: Claims Received by Comcare (all injuries)

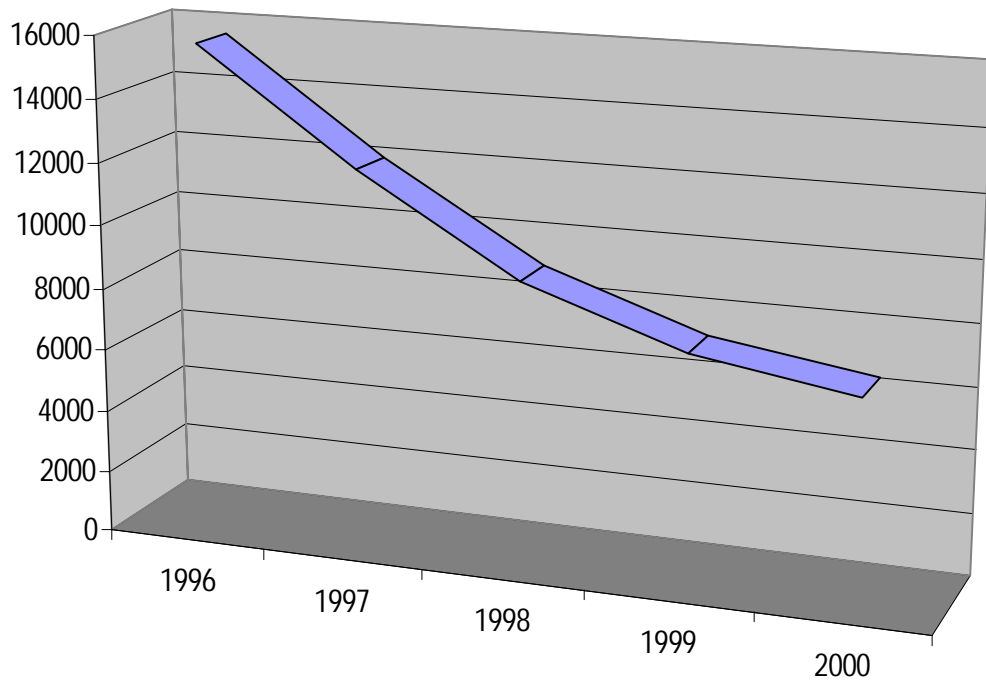
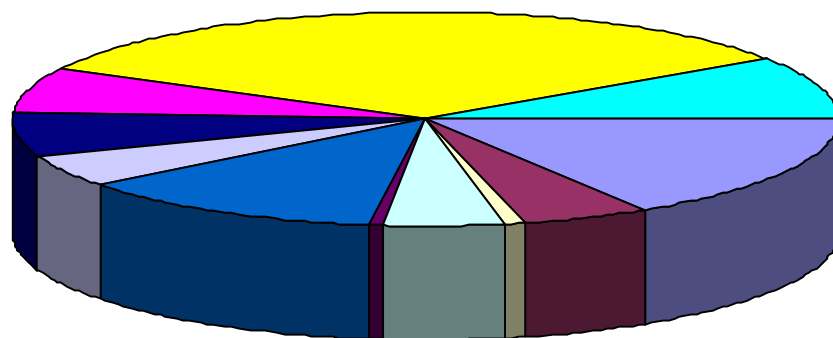


Figure 1.4: Claims Received by Comcare 1999-2000



- | | |
|-------------------------------|-------------------------|
| Back | Contusion/Crush |
| External Effects | Fracture excluding back |
| Multiple Injuries | No injury profile |
| Occupational Overuse Syndrome | Open Wounds |
| Other Diseases | Other Injuries |
| Strain excluding back | Stress |

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Figure 1.5: Average Incidence Rate of New Cases Reported to Comcare (per '000 employees)

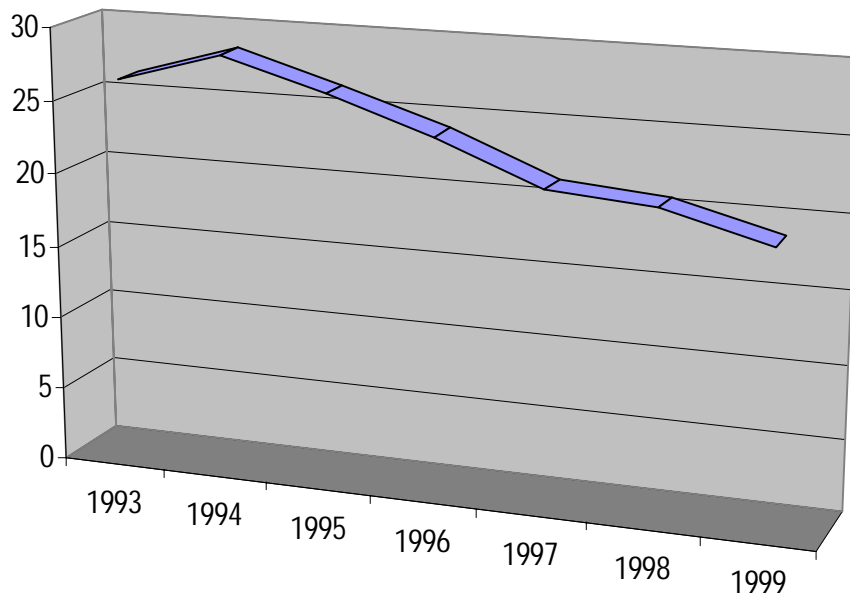
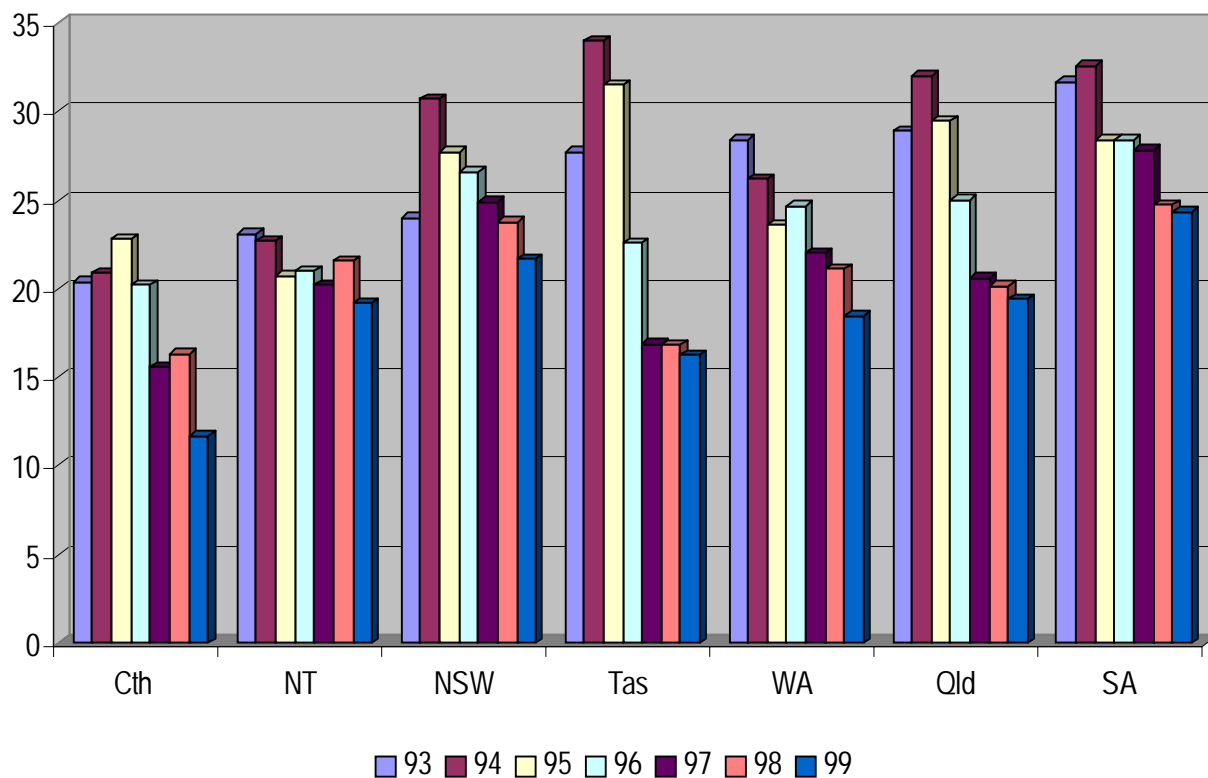


Figure 1.6: Incidence Rate of New Cases Reported to Comcare by Jurisdiction (per '000 employees)



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Figure 1.7: Incidence Rates and Lost Time Comparisons by Jurisdiction 1996-97
(per '000 employees)

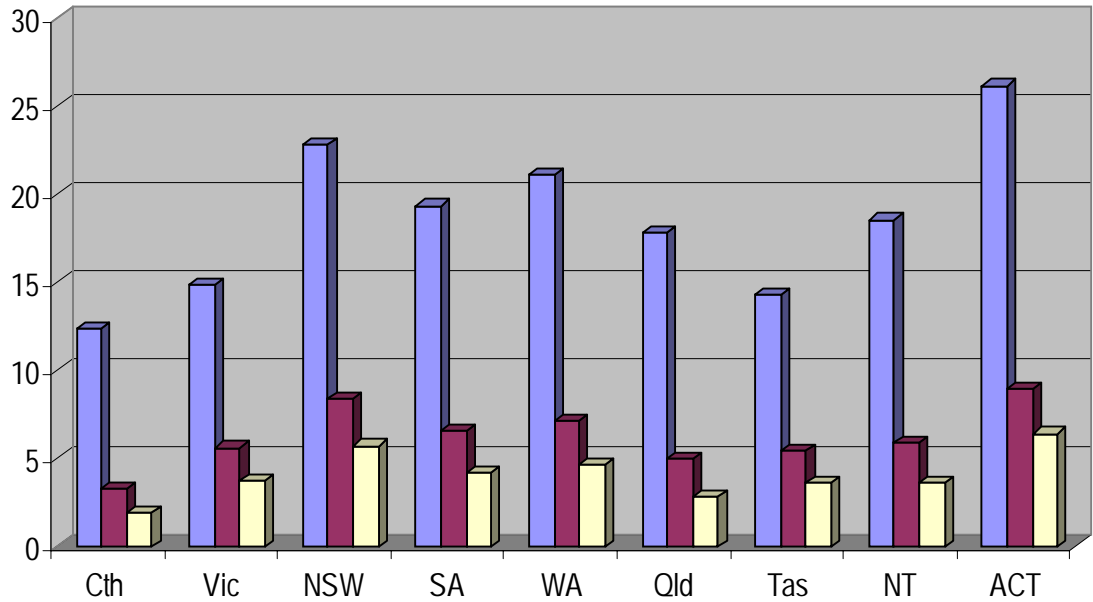
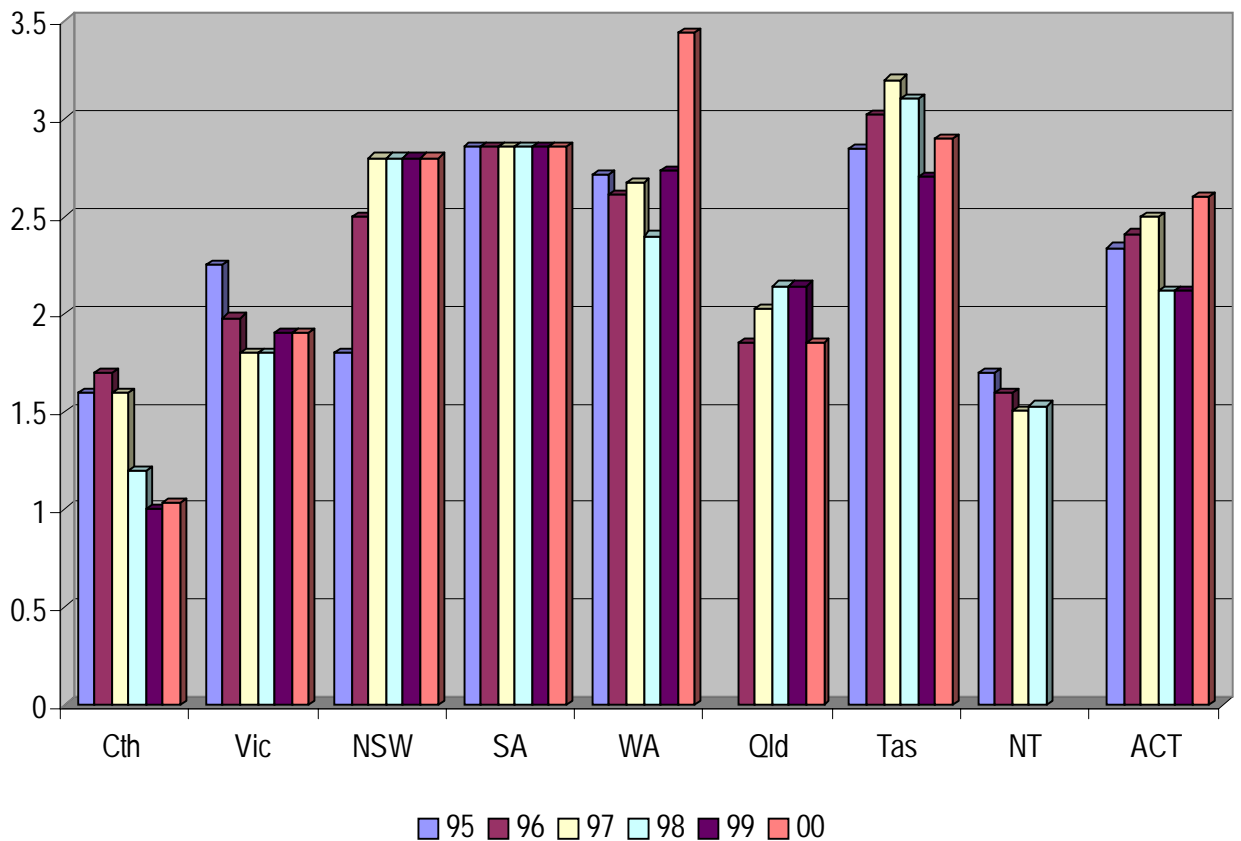


Figure 1.8: Average Premium Rates (cents per salary \$) by Jurisdiction



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Table 1.1: Commonwealth Scheme Profile¹¹²

<i>Financial Year</i>	<i>Total Premiums (Cwth) (\$m)</i>	<i>Total Premiums (ACT) (\$m)</i>	<i>Total Premiums (\$m)</i>	<i>Total Customers</i>	<i>Comcare Insured Employees</i>	<i>Total Workers Compensation Costs (\$m)</i>	<i>Premium Rate (%)</i>
1990	215		215	180	269 000	138.5	2.6
1991	174		174	233	271 000	172.5	1.7
1992	160		160	253	282 000	189.3	1.7
1993	163		163	295	271 000	189.3	1.7
1994	148.1		148.1	275	261 000	205.2	1.6
1995	120.9	28.1	149	215	238 348	205	1.4
1996	149.75	33.45	183.2	216	232 328	203.2	1.7
1997	120.4	33.4	153.8	170	179 279	197.1	1.6
1998	81.7	21.4	103.1	157	158 097	189.2	1.2
1999	67.7	196	87.3	158	150 190	172.8	1
2000	70.1	21.3	91.4	163	142 996	183.6	1

Table 1.2: Incidence Rate of New Cases Reported by Jurisdiction (per '000 employees)¹¹³

<i>Date</i>	<i>Cth</i>	<i>NT</i>	<i>NSW</i>	<i>Tas</i>	<i>WA</i>	<i>Qld</i>	<i>SA</i>
1993-94	20.4	23.1	24	27.7	28.4	28.9	31.7
1994-95	20.9	22.7	30.7	34	26.2	32	32.6
1995-96	22.8	20.7	27.7	31.5	23.6	29.5	28.4
1996-97	20.2	21	26.6	22.6	24.7	25	28.4
1997-98	15.59	20.23	24.9	16.89	22.03	20.59	27.83
1998-99	16.29	21.54	23.79	16.84	21.14	20.16	24.71
1999-2000	11.7	19.22	21.68	16.27	18.44	19.43	24.34

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Table 1.3: Incidence Rate of Injuries by Jurisdiction and Duration (per '000 employees)¹¹⁴

<i>Duration</i>	<i>Cth</i>	<i>Vic</i>	<i>NSW</i>	<i>SA</i>	<i>WA</i>	<i>Qld</i>	<i>Tas</i>	<i>NT</i>	<i>ACT</i>
5 or More	12.3	14.8	22.8	19.3	21.1	17.8	14.3	18.5	26.1
30 or More	3.3	5.6	8.4	6.6	7.1	5.0	5.4	5.9	8.9
60 or More	1.9	3.7	5.7	4.2	4.6	2.8	3.6	3.6	6.4

Table 1.4: Average Premium Rates¹¹⁵ per Financial Year by Jurisdiction (per cent)¹¹⁶

<i>Financial Year</i>	<i>Cth</i>	<i>Vic</i>	<i>NSW</i>	<i>SA</i>	<i>WA</i>	<i>Qld</i>	<i>Tas</i>	<i>NT</i>
1995	1.6	2.25	1.8	2.86	2.71		2.85	1.7
1996	1.7	1.98	2.5	2.86	2.61	1.85	3.02	1.6
1997	1.6	1.8	2.8	2.86	2.67	2.023	3.2	1.5
1998	1.2	1.8	2.8	2.86	2.4	2.145	3.1	1.53
1999	1	1.9	2.8	2.86	2.73	2.145	2.7	
2000	1.03	1.9	2.8	2.86	3.44	1.85	2.9	

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Table 2: New Claims Received by Comcare¹¹⁷

<i>Injury Type</i>	<i>Back</i>	<i>Contusion /Crush</i>	<i>External Effects</i>	<i>Fracture excluding back</i>	<i>Multiple Injuries</i>	<i>No injury profile</i>	<i>OOS¹¹⁸</i>	<i>Open Wounds</i>	<i>Other Diseases</i>	<i>Other Injuries</i>	<i>Strain excluding back</i>	<i>Stress</i>	<i>All Injuries Total</i>
1995–96	2709	1109	324	558	49	20	1550	963	980	1007	4542	1846	15657
1996–97	2055	792	206	508	40	6	1356	829	715	872	3525	1157	12061
1997–98	1448	547	128	360	29	12	882	515	688	670	2893	852	9024
1998–99	1143	392	84	309	66	5	862	400	445	485	2346	725	7262
1999–2000	1037	327	51	310	41	0	795	317	432	440	2118	620	6488

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Appendix 3

Key Differences Relating to Licences

<i>Issue & Proposed Section</i>	<i>The Act</i>	<i>The Bill</i>
Commission Directions (108D(1)(a))	Commission may give directions to an agency with respect to the performance of its functions or the exercise of its powers under this Act ¹¹⁹	Commission may issue licence on condition that agency complies with any relevant directions given by Commission
Ministerial Directions (101)	No express provision.	The broad power of the Minister to give directions to the Commission expressly extends to criteria and procedures for grant, extension, extension, suspension and revocation; the scope and conditions of licences, variation of licences and publication of notices. Directions must be published and are disallowable instruments
Obligation to consider applications (103)	Commission is obliged to consider all valid applications ¹²⁰	Commission simply empowered to grant a licence without any such obligation
Procedures for Valid Applications (102)	Determined by Commission	Determined by regulations
Impact on employees (104)	Commission must consider 'the likely attitude of employees of the [agency] to the grant of ... a licence' ¹²¹	Commission must consider whether the grant will be 'contrary to the interests of the employees of the licensee'
Capacity to Meet Standards in Claims Management (104)	Agency must be <i>likely to be able</i> to meet the standards set by the Commission for the management of claims for compensation and the rehabilitation of employees ¹²²	Agency must <i>have the capacity to ensure</i> that claims will be managed in accordance with standards set by the Commission for the management of claims; Agency must <i>have the capacity</i> to meet the standards set by the Commission for the [actual] rehabilitation and occupational health and safety of its employees.
Winding Up	Commission must consider whether appropriate arrangements have been made in the event that the corporation is wound up ¹²³	None
Licence Fees and Cost Recovery (104A)	Fees represent the costs to the Commission of monitoring performance and the costs to Comcare of providing assistance under the Act ¹²⁴	Fees represent the costs to the Commission and to Comcare of performing various functions under the Act and the <i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i> .
Variations (105)	Commission may at any time vary any of the conditions to which a licence is subject ¹²⁵	Commission may at any time vary the scope of the licence
Suspension and Revocation (106)	Commission may suspend or revoke licence if it is satisfied that agency may have failed to comply with a condition of the licence ¹²⁶	Commission may suspend or revoke licence <i>if it considers it appropriate to do so</i> , following procedures specified in ministerial direction.
Consequences of suspension or revocation (107A)	Provided for in the Act	Provided for in Regulations

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Appendix 4

Key Differences Relating to Premiums

<i>Issue & Proposed Section</i>	<i>The Act</i>	<i>The Bill</i>
Responsibility (97)	Commission ¹²⁷	Comcare, in accordance with directions by the Commission (97A(1)(a))
Bonus Amount (97A(2))	Assessed having regard to: number of claims made, amount of compensation paid out, rehabilitation and occupational health and safety programs ¹²⁸	Assessed having regard to: number of claims made and amount of compensation paid out
Penalty Amount (97A(2))	Assessed having regard to: number of claims made, amount of compensation paid out, rehabilitation and occupational health and safety programs ¹²⁹	Assessed having regard to: number of claims made and amount of compensation paid out
Estimated Liability Component (97A(2))	Estimated liability in respect of estimated number of injuries suffered during that financial year ¹³⁰	Estimated <i>present and future</i> liability, including liability for actions for non-economic loss, in respect of estimated number of injuries suffered during that financial year
Estimated Management Component (97A(2))	Estimated administrative costs, in respect of estimated number of injuries, etc that are reasonably attributable to agency ¹³¹	Estimated <i>present and future</i> claims management costs, including costs for managing actions for non-economic loss, in respect of estimated number of injuries, etc that are reasonably attributable to agency
Regulatory Contributions (97D)	" "	Estimated administrative cost of Comcare and Commission attributable to agencies, other than the costs in the Management Component, for functions under the Act and the Occupational Health and Safety Act ¹³²
Methods and Matters in Making Estimates (97(A)(2) and 97E)	Liability component only is estimated having regard to methods and matters determined by the Minister ¹³³	Liability and management components are estimated having regard to methods and matters in guidelines by the Commission, consistent with directions by the Minister

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Endnotes

- 1 Section 21. It is not an offence where the person has a commercial evaluation, low volume or introduction permit. Nor is it an offence in relation to an 'excluded use', low volume and medium risk chemicals or in relation to research and development purposes in certain circumstances.
- 2 That is, a polymer 2% of whose weight is attributable to monomer or other reactive component or a combination of these which has not been listed on the Australian Inventory of Chemical Substances (AICS): section 5. This does not include something which is a 'reaction intermediate' (ie, something which is a substance created in the course of a chemical reaction which does not become a major component of the reaction mixture and is not extracted from the reaction system: section 5) or an 'incidentally-produced chemical' (ie, an insignificant chemical which is produced as a result of a chemical reaction during the manufacture or use of another chemical or as a result of exposure to environmental conditions during handling and storage: section 5).
- 3 The notification statement must address a range of prescribed matters including its name and/or the name of its constituent chemicals and a description of its physical and chemical characteristics. The statement must also describe the volume proposed to be manufactured or imported. In addition, it must describe the chemical's health and environmental effects, if and how it meets the definition of 'hazardous substance' and details of any notification made in a foreign country. Specifically, the statements must address various matters relating to occupational health and safety, including statistics on the number and categories of workers involved in the handling of the chemical and its potential hazardous effects: subsection 23(4); Schedule, Parts A, B, C and D.
- 4 Section 32.
- 5 Section 33.
- 6 Among other characteristics, synthetic polymers of low concern have a 'number average molecular weight' or NAMW of more than 1000: section 5.
- 7 Section 34.
- 8 Section 35.
- 9 Sections 36–38.
- 10 Section 56.
- 11 Section 50B.
- 12 Section 60D.
- 13 Section 60E.
- 14 Section 60.
- 15 Subparagraphs 33(g) and 60B(1)(h).
- 16 *Explanatory Memorandum*, p. 9.

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- 17 The Hon. Brian Howe, Commonwealth Employees' Rehabilitation and Compensation Bill 1988, Second Reading Speech, House of Representatives, *Debates*, 27 April 1988, p. 2191.
- 18 John Ballard, *Annotated Safety, Rehabilitation and Compensation Act 1988*, 4th Ed, The Federation Press, Sydney, 1999, p. xxii.
- 19 The Hon. Brian Howe, Commonwealth Employees' Rehabilitation and Compensation Bill 1988, Second Reading Speech, House of Representatives, *Debates*, 27 April 1988, p. 2191.
- 20 Section 4.
- 21 Productivity Commission, *Workers' compensation in Australia*, [Report No. 36](#), 1993
- 22 Productivity Commission, *Work, Health and Safety*, [Report No. 47](#), 1995.
- 23 HWCA comprises members from Commonwealth, State and Territory workers' compensation authorities. Its vision is to reduce the social and economic cost of workplace injury and disease across Australia.
- 24 Heads of Compensation Authorities, *Promoting Excellence - National Consistency in Australian Workers' Compensation: Final Report to Labour Ministers' Council*, May 1997 at <http://www.hwca.org.au/part001.htm>.
- 25 Productivity Commission, *Workers' compensation in Australia*, [Report No. 36](#), 1993
- 26 Productivity Commission, *Work, Health and Safety*, [Report No. 47](#), 1995.
- 27 Heads of Workers Compensation Authorities, *Promoting Excellence - National Consistency in Australian Workers' Compensation: Final Report to Labour Ministers' Council*, May 1997 at <http://www.hwca.org.au/part001.htm>.
- 28 The Heads of Workers' Compensation Authorities comprises members from Commonwealth, State and Territory workers' compensation authorities. Its vision is to reduce the social and economic cost of workplace injury and disease across Australia.
- 29 Workplace Relations Minister's Council, *Comparative Performance Monitoring: Comparison of Occupational Health and Safety Arrangements in Australia*, May, 1999 at <http://www.dewrsb.gov.au/workplaceRelations/policy/wrmc/cpm/default.asp>.
- 30 Heads of Workers Compensation Authorities, *Comparison of Workers Compensation Arrangement in Australian Jurisdictions*, July 1999 at [http://www.workcover.vic.gov.au/vwa/publica.nsf/InterPubDocsA/5CE1933438313D944A256842002661CA/\\$File/CompReportJun99.pdf](http://www.workcover.vic.gov.au/vwa/publica.nsf/InterPubDocsA/5CE1933438313D944A256842002661CA/$File/CompReportJun99.pdf).
- 31 Workplace Relations Minister's Council, *Comparative Performance Monitoring: The Second Report into Australian and New Zealand Occupational Health and Safety and Workers' Compensation Programs*, April 2000 at <http://www.dewrsb.gov.au/workplaceRelations/policy/wrmc/cpm/default.asp>.
- 32 Comcare, *Annual Report 1997-98*, p. 11 and *Annual Report 1998-99*, p. 18.
- 33 Comcare, *Annual Report 1995-96*, p. 8.
- 34 Comcare, *Annual Report 1996-97*, p. 9.

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- 35 *Australian Postal Commission v Burch* (1998) 85 FCR 264. *Burch* was a case involving a heart attack at work in the context of a pre-existing heart condition. It is discussed below in the Main Provisions section of this Digest.
- 36 The Commission's *Annual Report* states that one of the main factors 'contributing to the increase in the risk component of the [premium] pool' is an actuarial prediction relating to 'long-term diseases which lead to a stroke, aneurism, heart attack or disc prolapse that happens at work'. It states that '[p]ast pools have not included any allowance for claims of this type but the Commission decided that it would be prudent to make allowance for such claims in the 2000 - 2001 pools'. It effectively identifies *Burch* as the cause: Safety, Compensation and Rehabilitation Commission, [Annual Report 1999-2000](#), p. 32.
- 37 *ibid.*
- 38 In Evidence to the Economics Legislation Committee (Estimates), the Department advised that 'it is clear that the scheme is reducing. For instance, as government business enterprises are privatised, they are leaving the scheme. This will, of course, affect the premium pool. So there is a question at some point as to what is the viable size of a scheme': Economics Legislation Committee (Estimates), *Transcript of Hearings*, Senate, 26 February 1997, p. 131.
- 39 *Explanatory Memorandum*, p. 3.
- 40 *Explanatory Memorandum*, p. 4.
- 41 *Explanatory Memorandum*, p. 5.
- 42 Thus, it is not necessary or sufficient for an applicant to relate the disease to the fact of being employed. S/he must point to 'some event or occurrence in the course of employment or some characteristic of the work performed or the conditions in which it was performed'. The test is less stringent than the test of causation in negligence. The applicant need only demonstrate that 'the relevant aspects of the employment add their measure to the creation of the condition, its aggravation or its acceleration' or that they be 'part of the cause' (*Treloar v Australian Telecommunications Commission* (1990) 26 FCR 316 at 322). The question is 'whether what the employee in fact does in his employment contributes in a positive way to the contracting of, acceleration of, or aggravation of the illness' (*Elleissy v Australian Postal Corporation* (1989) 18 ALD 240, per Hill J at p 243). This is answered on the basis of common sense rather than on scientific or logical theories (*Kirkpatrick v Commonwealth of Australia* (1985) 62 ALR 533 at p. 537).
- 43 Brian Howe, Commonwealth Employees' Rehabilitation and Compensation Bill 1988, Second Reading Speech, House of Representatives, *Debates*, 27 April 1988, p. 2191.
- 44 [2000] AATA 404 (23 May 2000).
- 45 Thus in *Zickar v MGH Plastic Industries Pty Ltd* (1996) 187 CLR 310 Toohey, McHugh and Gummow JJ accepted that an employee should be compensated for a rupture of a blood vessel which was largely attributable to a pre-existing condition involving a swelling of the blood vessel. Their Honours were satisfied that the rupture was not an inevitable consequence of the underlying condition. Similarly, in *Health Insurance Commission v Van Reesch* [1996] 1118 FCA 1 (20 December 1996) the Full Court accepted that an employee who suffered a disc prolapse which was attributable in part to a back disease should be compensated as the prolapse was not an inevitable consequence of the disease.

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- 46 *Workers Compensation Act 1987* (NSW).
47 (1996) 187 CLR 310.
48 (1998) 85 FCR 264.
49 *ibid.*
50 (2000) 174 ALR 626.
51 *ibid.*
52 Section 5.
53 *Commission for Safety and Rehabilitation of Commonwealth Employees v Chenhall* (1992) 109 ALR 361. Compare *Re Choo and Comcare* (1995) 39 ALD 399 (interview to address an established situation) with *Battye and Comcare* [2000] AATA 18 (20 January 2000) (interview to investigate possible disciplinary issue); *Re Murray and Comcare* (AAT 12706, 13 March 1998 (investigation prior to decision on disciplinary action); *Sow Hong (Sue) Tan v. Comcare* No. A96/491 AAT No. 12209 (investigation of complaints).
54 *Carson v Comcare* No. s108 of 1997 AAT No. 13150.
55 Subsection 19(2).
56 Section 4.
57 And the employee did not subsequently terminate his/her employment.
58 For example where the employee terminates his/her employment.
59 Mr Chenhall was a compulsory retiree and therefore did not fit within the category of employees who 'terminate their employment'.
60 *Comcare v Gregory Charles Chenhall*, Unreported, Federal Court of Australia, 16 August 1996, [No. QG 78 of 1996](#).
61 Broadly, subsections 124(1)-124(2) provide, *prima facie*, that compensation is payable for injuries prior to 1 December 1988 that were compensable under the 1971 Act. Conversely, compensation is not payable if it was not payable under the 1971 Act.
62 *Schlenert v Australian and Overseas Telecommunications Corporation* (1994) 121 ALR 67, followed in *Comcare v Bozicevic* (1997) 144ALR 132. *Schlenert* was applied in many subsequent cases: John Ballard, Peter Sutherland and Allan Anforth, *Annotated Safety, Rehabilitation and Compensation Act 1988*, 4th Ed, The Federation Press, Sydney, 1999, p 451.
63 See text at endnote 61 below.
64 The Hon. Brian Howe, Commonwealth Employees' Rehabilitation and Compensation Bill 1988, Second Reading Speech, House of Representatives, *Debates*, 27 April 1988, p. 2191.
65 *ibid.*
66 Government amendments to Commonwealth Employees' Rehabilitation and Compensation Bill 1988, Clause 44a, Senate, *Hansard*, 2 June 1988, p. 3476.

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- 67 Subsection 45(4). The amounts in the Act are \$30,000 and \$110,000 respectively. However, these amounts are indexed over time. The figures quoted in the text above are from Heads of Workers' Compensation Authorities, Comparison of Workers' Compensation Arrangements in Australian Jurisdictions, July 1999, at <http://www.workcover.vic.gov.au/vwa/publica.nsf/InterPubDocsA/5CE1933438313D944A256842002661CA?OpenDocument>, p. 24.
- 68 The Act covers Commonwealth departments and licensed authorities and corporations.
- 69 *Sutherland v Federal Airports Corporation* [1998] SASC 6903. Thus, if an employee of one Commonwealth authority is injured at the hands of another Commonwealth authority, s/he will retain the ability to take a common law negligence action. See generally Lindsay Smith and Kevin Nicholson, 'The Comcare Legislation: Its Limitation on Actions at Common Law', *Law Society of South Australia Bulletin*, Vol. 21, No. 4, 1999, pp 24-25.
- 70 (1994) 179 CLR 297.
- 71 Section 51(xxxi) prohibits acquisition of property on unjust terms. The decision was based on a characterisation of the cause of action as 'property' and a characterisation of the statutory bar as an acquisition of property, or an acquisition of a benefit corresponding directly to the property, rather than a mere extinguishment of a cause of action or a simple reduction in the statutory limitation period.
- 72 (1997) 191 CLR 471.
- 73 Limitation periods for common law negligence actions are determined by limitations Acts in the States and Territories. The limitation periods are between three and six years and, at least in relation to latent injuries and diseases, usually start to run once the plaintiff becomes aware that s/he has suffered injury as a result of the negligence of another person: Dr Peter Nygh and Peter Butt (Eds.), *Butterworths Encyclopaedic Australian Legal Dictionary*, Butterworths, Sydney 1997. Courts generally have the power to extend periods if it is 'just and reasonable' to do so, having regard to a range of factors including the duration of the disability, the appearance of facts giving rise to the cause of action and the time taken by the plaintiff to institute proceedings having become aware of the negligence (see generally *Halsbury's Laws of Australia*, Butterworths, Sydney 2000, [255-430]–[255-465].) However, there may be limits on how long an extension or postponement may be given. In any event, it is reasonable to expect that in most cases a limitation period would expire within 12 years. It is significant that in *Georgiadis* the plaintiff had been injured on five occasions, but three of the injuries were statute barred under the State limitations legislation. Only the 'live' actions were the subject of the High Court decision. In *Commonwealth v Mewett*, the Court considered the validity of the statutory bar in relation to actions barred under State and Territory limitations legislation. Not only did the court apply *Georgiadis*, but it held that the statutory bar should be assessed in the context of its operation on 1 December 1988 in relation to causes of action arising before 1 December 1988. Thus, the bar was invalid and it did not matter that these causes of action might eventually be extinguished by limitations legislation, and therefore potentially lose their characterisation as 'property'. This was so at least where an employee had sought an extension, the statutory bar was no defence: '[t]he fact that the limitation period later operated on the causes of action and that...each [employee] seeks an

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extension of time does not alter the position': Toohey J at p 514. See also Gummow and Kirby JJ at p 553.

74 Sections 48 and 47.

75 Section 48.

76 Subsection 48(4A).

77 The prohibition on compensation is not explicit in respect of actions against third parties. It is simply activated where an employee 'recovers damages in respect of an injury, [etc] in respect of which compensation is payable under this Act'. Thus, *any* damages, whether they be recovered against the Commonwealth, etc *or* a third party will activate the prohibition. This conclusion is reinforced by the fact that actions against the Commonwealth, etc are statute barred (section 44), which only leaves actions against third parties (and dependants actions). Moreover, there is an exception to the prohibition where actions against third parties are instituted or taken over by Comcare (paragraphs 48(5)(a) and (b)).

78 Subsection 48(3).

79 Subsection 49(2). That is, any compensation aside from basic income support benefits for minors and compensation for dependants who have no recourse to dependants' actions: subsection 49(5).

80 Section 50.

81 Section 51.

82 See the definition of these terms in Butterworths Encyclopaedic Australian Legal Dictionary.

83 *Explanatory Memorandum*, p. 38.

84 *Explanatory Memorandum*, p. 38.

85 Schedule 1, item 1. Subsection 23(1A) provides:

(1A) However, if an APS employee who has reached 63 suffers an injury (whether before or after the commencement of this subsection):

(a) subsection (1) does not apply; and

(b) compensation is payable under section 19, 20, 21, 21A or 22 in respect of the injury:

(i) to the extent that this Act (other than subsection (1)) allows; and

(ii) for a maximum of 104 weeks (whether consecutive or not) during which the employee is incapacitated.

86 That is, compensation is payable (for a limit of 104 weeks) at the maximum rate until the 'pool of compensation' is exhausted, less any deductions in respect of income derived from any employment and less any ongoing and/or lump-sum superannuation entitlements, etc: sections 19-22, as amended by **Part 3** and taking account of **Part 5** above.

87 See generally Halsbury's Laws of Australian [300-165].

88 *Explanatory Memorandum*, p. 24.

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- 89 In explaining the statutory bar, the Minister said; '[a]ccordingly, it will no longer be possible for an employee to sue the Commonwealth or a fellow employee': The Hon. Brian Howe, Commonwealth Employees' Rehabilitation and Compensation Bill 1988, Second Reading Speech, House of Representatives, *Debates*, 27 April 1988, p. 2191.
- 90 The Minister said: 'employees or their dependants who sue third parties will not be entitled to receive further benefits under the scheme and will be required to pay back any amount of compensation they have received': The Hon. Brian Howe, Commonwealth Employees' Rehabilitation and Compensation Bill 1988, Second Reading Speech, House of Representatives, *Debates*, 27 April 1988, p. 2191.
- 91 In discussing section 49, a provision regarding reduction in compensation where damages are recovered by dependants, the *Explanatory Memorandum* noted that the relevant clause was designed to protect against the situation where one dependant had received compensation and 'one or more other dependants ...of the employee do not claim compensation but institute other proceedings instead and recover damages from a third party', Commonwealth Employees' Rehabilitation and Compensation Bill 1988, *Explanatory Memorandum*, p 47.
- 92 That is, Commonwealth authorities that have been privatised and private sector corporations that compete with Commonwealth authorities or corporations.
- 93 The Act originally used the term 'contribution'. However, the provisions relating to calculation, approval and payment of contributions were amended by the *Industrial Relations Legislation Amendment Act 1991*. The amendments changed the terminology to 'premiums' so as to 'reflect more closely the nature of the payment involved': Industrial Relations Legislation Amendment Bill 1991, *Explanatory Memorandum*, p. 6.
- 94 See generally John Ballard, Peter Sutherland and Allan Anforth, *Annotated Safety, Rehabilitation and Compensation Act 1988*, 4th Ed, The Federation Press, Sydney, 1999, pp. 360–362.
- 95 Ralph Willis, MP, Industrial Relations Legislation Amendment Bill 1991, Second Reading Speech, House of Representatives, *Debates*, 20 February 1991, p. 1016.
- 96 Ibid.
- 97 Part VII, Division 4A.
- 98 Section 90C. These are determined by the Minister for Finance.
- 99 Section 91.
- 100 To enable Comcare to discharge liabilities for compensation, to enable it to pay damages or costs for actions for non-economic loss and to meet administrative expenses.
- 101 To enable Comcare to repay excess premiums, etc.
- 102 Heads of Workers' Compensation Authorities, 'Promoting Excellence: National Consistency in Australian Workers' Compensation - Interim Report', May 1996.
- 103 *ibid*, pp. 1, 57 and 58.
- 104 Industrial Relations Legislation Amendment Bill 1996, Second Reading Speech, House of Representatives, *Debates*, 11 December 1996, p. 8186.

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- 105 *ibid.*
- 106 *ibid.*: 8187.
- 107 Shadow Minister for Industrial Relations, the Hon. Bob McMullan MP, 'Budget Compromises Workers' Safety', *Press Release*, 21 August 1996.
- 108 Krysti Guest, Industrial Relations Legislation Amendment Bill 1996, [Bills Digest No. 86 1996-97](#).
- 109 Community and Public Sector Union, Australian Government OHS and Workers Compensation Legislation, February 2001, at <http://www.cpsu.org/ohs/ohs230201.pdf>.
- 110 *ibid.*
- 111 See '[Assessment and regulation of chemicals in Australia](http://www.nicnas.gov.au)' on the NICNAS Website at <http://www.nicnas.gov.au>.
- 112 Source: Comcare, *Annual Report 1999-2000*, p 23 and *Annual Report 1997-98*, p 78.
- 113 Worksafe Australia, *Compendium of Workers' Compensation Statistics, Australia 1992-93*, August 1995 at <http://www.worksafe.gov.au/pdf/compendium92-93.pdf> and subsequent publications to National Occupational Health and Safety Commission, *Compendium of Workers' Compensation Statistics, Australia 1998-99*, December 2000 at <http://www.worksafe.gov.au/pdf/compendium98-99.pdf>.
- 114 Workplace Relations Minister's Council, *Comparative Performance Monitoring: The Second Report into Australian and New Zealand Occupational Health and Safety and Workers' Compensation Programs*, [Occupational Health and Safety, Part A](#), April 2000.
- 115 That is cents per salary \$.
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- 119 Sections 107S and 107R.
- 120 Subsections 107E(1) and 108F(1).
- 121 Paragraphs 107F(3)(b) and 108G(3)(c).
- 122 Paragraphs 107F(3)(a) and 108G(3)(a).
- 123 Paragraphs 107F(2)(c) and 107F(3)(d).
- 124 Sections 107R and 108Q.
- 125 Subsections 107G(2) and 108H(3).

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126 Sections 107V and 108T.

127 Section 96.

128 Subsection 96A(2).

129 Subsection 96A(2).

130 Subsection 96A(2).

131 Subsection 96A(2).

132 *Occupational Health and Safety (Commonwealth Employment) Act 1991.*

133 Subsection 96A(2).

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