SAFETY, REHABILITATION AND COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2000

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment, Workplace Relations and Small Business, the Honourable Peter Reith MP)
SAFETY, REHABILITATION AND COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2000

OUTLINE


The amendments to the ICNA Act (Schedule 1) will:

- Amend the definition of synthetic polymers of low concern, which will result in reduced fees for industry;
- Improve the secondary notification procedures for existing chemicals, enabling industry to share fees and reducing the burden on industry to provide information; and
- Make other amendments of a minor technical nature.

The amendments to the SRC Act (Schedule 2) will:

- Clarify the circumstances in which compensation is payable under the Act (Schedule 2, Part 1);
- Address a deficiency in the Act relating to compensation for employees no longer employed by the Commonwealth by enabling their normal weekly earnings to be increased by reference to a prescribed index (Schedule 2, Part 2);
- Clarify provisions relating to the calculation of compensation (Schedule 2, Part 3) by:
  - standardising the calculation of the first 45 weeks entitlement to incapacity payments in a manner more beneficial for employees; and
  - enabling any earnings which an employee receives from any employment to be deducted from the amount of compensation payable under s.19;
- Clarify that there is no entitlement under the SRC Act to a lump sum payment for economic loss under section 27 for a permanent impairment occurring prior to 1 December 1988 except where a claim has been lodged before the introduction of this amendment (Schedule 2, Part 4);
- Enable all employees covered by the Act to receive weekly compensation payments beyond the age of 65 years for a maximum period of 104 weeks under standard provisions if they are injured after the age of 63 years, reflecting that barriers to employees working past 65 years have been removed (Schedule 2, Part 5);
- Protect injured employees by ensuring that persons providing rehabilitation treatment and services meet acceptable standards by:
  - providing an improved process for approving rehabilitation program providers;
  - allowing Comcare to charge a fee for the process of approval;
  - allowing revocation of approval in certain circumstances; and
  - providing a statutory basis for existing guidelines and their review (Schedule 2, Part 6);
Ensure that dependants of deceased employees are not barred from taking action at common law (Schedule 2, Part 7);

Streamline the existing complex licensing arrangements by reducing five specific licences to one generic licence. Licences will continue to be granted by the Safety, Rehabilitation and Compensation Commission but this will be done in accordance with Ministerial directions to the Commission in relation to issues such as the criteria for granting licences and licence conditions. These directions will be disallowable instruments (Schedule 2, Part 8);

Improve access to compensation for permanent impairment for hearing loss by reducing the level of binaural hearing loss required before an employee is entitled to compensation (Schedule 2, Part 9);

Amend provisions relating to premiums and regulatory contributions (Schedule 2, Part 10) by:
- enabling Comcare to collect premiums to fund common law claims which are permitted under the Act, and to manage such claims;
- amending the procedures for determining premiums;
- rationalising scheme funding under the SRC Act and the Occupational Health and Safety (Commonwealth Employment) Act 1991;
- simplifying existing appropriation and revenue arrangements for Comcare to ensure consistency with the Commonwealth Authorities and Companies Act 1997 and enable Comcare to receive premiums, licence fees and occupational health and safety contributions into its own bank account;

Make consequential amendments to proposed s.34R of the SRC Act concerning changed administrative law arrangements proposed by the Administrative Review Tribunal Bill 2000 (Schedule 2, Part 11); and

Make the following miscellaneous amendments (Schedule 2, Part 12):
- amend the definition of “medical treatment”, enabling the definition to be updated by regulations to reflect the wider range of medical services being utilised by claimants;
- provide that the Chief of the Defence Force is the rehabilitation authority for employees who are members of the Defence Force;
- provide representation on the Safety, Rehabilitation and Compensation Commission for the Australian Capital Territory;
- enable the Chief Executive Officer of Comcare to sub-delegate functions delegated to him or her by the Safety, Rehabilitation and Compensation Commission;
- enable a member of the Safety, Rehabilitation and Compensation Commission to sub-delegate functions delegated to him or her by the Commission;
- reflect an existing administrative arrangement whereby the Northern Territory reimburses Comcare for payments of compensation to certain persons and the associated administrative costs;
- provide that a declaration under subsection 5(12) (which provides for certain declarations to be made by the Minister at the request of the Chief Minister of the Australian Capital Territory) is a disallowable instrument; and
- ensure that compensation benefits for former employees are maintained at a minimum level of 70% of normal weekly earnings.

Schedule 3 introduces a range of consequential and technical amendments to other legislation. It will:
• Amend the *Equal Opportunity for Women in the Workplace Act 1999* to correct a technical anomaly arising from an omission in the *Equal Opportunity for Women in the Workplace Amendment Act 1999*;

• Amend the *Income Tax Assessment Act 1936* to authorise provision of taxation information to Comcare as well as to the Safety, Rehabilitation and Compensation Commission;

• Amend the *National Occupational Health and Safety Commission Act 1985* to take account of the change of name of the Australian Chamber of Commerce and Industry; and

• Amend the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, consequential on the amendments to premium collection arrangements proposed by Part 10 of Schedule 2 to the Bill.

The opportunity is also being taken in all Schedules to convert any penalties expressed in monetary terms, in legislation in the Employment, Workplace Relations and Small Business portfolio which is otherwise amended by the Bill, into penalty units, consistent with section 4AB of the *Crimes Act 1914*.

**FINANCIAL IMPACT STATEMENT**

It is estimated that the amendments to the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) will provide savings to the Commonwealth, by way of a reduction in outstanding liabilities, of at least $31 million, spread over a number of years.

The amendments to the definitions of "injury" and "disease" in the SRC Act, proposed in Part 1 of Schedule 2, are expected to produce savings in outstanding liability, over a number of years, of some $17 million. There are also expected to be savings in outstanding liability from the amendment relating to an employee's earnings, proposed in Part 3 of Schedule 2, of the order of $18 million. Again this will be achieved over a number of years.

The amendments to the method for calculating the first 45 weeks of incapacity, proposed in Part 3 of Schedule 2, are expected to have a negative impact on outstanding liability of $1 million.

The amendment to provide incapacity payments beyond age 65 in limited circumstances, proposed in Part 5 of Schedule 2, completes implementation of the policy that employees should be entitled to incapacity payments if they remain at work beyond age 65. The overall cost of implementation of this policy is expected to have a negative impact on outstanding liability of $2.7 million.

The amendment reducing the level of binaural hearing loss required before an employee is entitled to compensation, is expected to cost Comcare $0.8 million per annum but will be funded through premiums. The cost to the Australian Defence Force is expected to be $2.8 million per annum and will be budget funded.

The net savings will be spread across all Commonwealth departments and agencies covered by Comcare. Further net savings will apply to other administrators in the jurisdiction including the Australian Defence Force, which is covered by the Military Compensation Scheme under the SRC Act, and licensed authorities and corporations such as Australia Post and Telstra.

The amendments to the licensing provisions of the SRC Act are expected to be Budget neutral.
Outline

There are no financial implications for the Commonwealth arising from the amendments to the other Acts included in this Bill.
REGULATION IMPACT STATEMENT

Industrial Chemicals (Notification and Assessment) Act 1989

A new procedure for priority existing chemicals that are subject to secondary notification.

Background

The Industrial Chemicals (Notification and Assessment) Act 1989 (ICNA Act) provides a scheme for regulating the import and manufacture of industrial chemicals in Australia. The organisation that operates the scheme is the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) which forms part of the National Occupational Health and Safety Commission (NOHSC).

The chemicals assessed by NICNAS fall into 2 main classes, new chemicals and priority existing chemicals, with different assessment processes for each. There is also a secondary notification procedure which may apply to chemicals that have already been assessed if there is a change in circumstances as set out in section 64 (for example, the function or the use of the chemical has changed).

The purpose of the chemical assessment process is to assess the risks for occupational health, public health and the environment of all new and selected existing chemicals.

Due to the large number (over 40,000) of existing chemicals in use in Australia, NICNAS assesses these chemicals on a priority basis in response to concerns about their health and/or environmental effects. Such chemicals are referred to as Priority Existing Chemicals (PECs).

Problem

Currently the procedure for secondary notification assessment for both new and existing chemicals is based on the assessment procedure for new chemicals.

There is generally much more interest in assessments of existing chemicals compared to new chemicals as their use is much more widespread (ie used in many industries and often by the general community). The new chemicals assessment process provides insufficient time for industry to comment on the draft assessment report and does not provide for public consultation until after the report is published.

The PEC assessment process allows industry and the public to participate, making it an open and transparent process.

At the present time, industry has 14 days to request variations to the draft assessment report in the new chemical assessment process. For the existing chemical assessment process, industry has 28 days to correct errors and then a further 28 days to request variations.

In the new chemical assessment process, the request to vary the report is a 2 step process. Only industry is able to request the Director to vary the report before publication. The public can request variations to the report after the report has been published. This is an administrative duplication and is not an open process as the report is published before the public can participate.
Existing chemicals are generally widely used chemicals that can have a major impact on the general public and workers. In the existing chemical assessment process, this 2 step process is combined, enabling both industry and the public to request to vary the report before it is published. In addition, the process will be more open and transparent because during the variation phase the Director must provide a copy of each decision to any person who requests it.

**Objective**

To allow for greater transparency, timeliness, accuracy and public & industry involvement in the secondary notification assessment process for existing chemicals.

**Options**

**Option 1**

Establish a separate procedure for existing chemicals that are subject to secondary notification which mirrors the regular assessment procedure for PECs.

**Option 2**

Status quo

**Impact Analysis**

**Option 1 – change the secondary notification assessment process.**

**Business (including small business)**

Benefits to business - it allows business more time to comment on the report and improves the community’s ability to input into the process. Assessment reports make available to companies introducing chemicals, to people within the workplace, to other Government agencies and the public, information on any risks to human health and the environment, and recommendations on ways to control and reduce any risks.

Recommendations from PEC assessment reports can have an important bearing on regulatory action that may be implemented within Australia in the context of protecting the health of workers & the public and protecting the environment. For instance, they may impact on national occupational exposure standards, hazard classification, health surveillance guidelines, labelling requirements and the development of codes of practice.

Cost to business – no additional cost to business

**Government**

Benefits to Government – streamlining the assessment process makes it administratively more efficient and satisfies the Government’s commitment to the removal of red tape.

Cost to Government – more resource intensive because the extra time available for comment may increase the number of enquiries, reports, comments and corrections from industry and the general public. The trade-off is a more open process with greater access by industry and the public. The
increase cannot be easily estimated but should be able to be borne within the existing running costs of NICNAS.

Consumers

Consumers in relation to PEC assessments includes the general public, employees, unions, NGOs (eg environmental organisations, consumer organisations).

Benefits to consumers – able to participate in the variation process before the report is finalised.

Costs to consumers – no added cost to consumers.

Option 2 – status quo

Business (including small business)

Benefits to business – The proposed changes allow business to comment prior to publication and public scrutiny just as they are able to now. (To allow correction of any factually incorrect information). No benefit to business in maintaining the status quo.

Cost to business – two secondary notification procedures instead of one. Limited time to comment on reports.

Government

Benefits to Government – The current system is faster and therefore less resource intensive for NICNAS (Government).

Cost to Government – no additional cost to Government.

Consumers

Benefits to consumers – no current benefit.

Cost to consumers – Unable to participate in the variation process before the report is finalised.

Consultation

The amendment has been endorsed by the Industry/Government Consultative Committee (IGCC). IGCC comprises 8 members and one ex-officio member (CEO of NOHSC), including 4 industry representatives and four government organisations. Industry representatives are ACSMA (Australian Chemical Specialties Manufacturers’ Association), PACIA (Plastics and Chemicals Industries Association), APMF (Australian Paint Manufacturers’ Federation) and ACCI (Australian Chamber of Commerce and Industry).

The proposed changes will be consistent with the 1997 amendments to the ICNA Act which changed the assessment process for existing chemicals. Those amendments arose from a review of the Existing Chemicals Program (in 1994). This review involved wide public consultation – the NICNAS Tripartite Advisory Committee (the committee pre IGCC which had industry, Government and union representative), the Interagency Coordinating Committee (Commonwealth
Departments), State and Territory OHS authorities, non-government organisations (eg environment and consumer groups) and the National Occupational Health and Safety Commission (again, industry, government and union representatives).

**Conclusion and recommended option**

Establish a separate procedure for existing chemicals that are subject to secondary notification which mirrors the regular assessment procedure for PECs. This will align the secondary notification assessment of existing chemicals with the process for assessing existing chemicals and allow greater consultation time for industry and make the assessment process more accessible to general comment. The current system does not allow industry enough time to adequately comment, sometimes this is not until after the assessment has been completed and gazetted. It will also allow the general public to comment at the same time as industry.

The current system allows a limited amount of time for industry to comment and the general public has no input to the process until after the assessment is published.

**Strategy to implement and review**

Change will be effective from the date of amendment. IGCC to review the amendment in twelve months time. Affected parties will be notified by a notice published in the Chemical Gazette and this information will appear on the NICNAS website: [http://www.worksafe.gov.au](http://www.worksafe.gov.au).
REGULATION IMPACT STATEMENT

Safety, Rehabilitation and Compensation Act 1988

Definitions of ‘injury’ and ‘disease’

Background

The Safety, Rehabilitation and Compensation Act 1988 (the SRC Act) establishes a fully funded system of compensation and rehabilitation for employees who are injured in the course of their employment. It covers all Commonwealth employees, including members of the Australian Defence Force, and employees of certain private sector corporations. ACT public service employees are also covered by virtue of the ACT Public Service having been declared a Commonwealth authority for the purposes of the SRC Act on 30 June 1994.

The estimated total outstanding liabilities to the scheme at 1999/2000 is some $1,193 million. The scheme covers approximately 159,000 insured employees. The claims frequency for the scheme is around 3.7 claims per 100 Commonwealth employees (at an average claim cost of $10,530) and 4.8 claims per 100 ACT public service employees (at an average cost of $24,800).

It was the original intention of the SRC Act in respect of compensation payments for diseases suffered by an employee, as expressed in the then Minister’s second reading speech, that “…it 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”. It was intended that, where such a connection could be established, the disease would be compensable under the SRC Act.

Recent decisions in the Administrative Appeals Tribunal and the Full Federal Court have had an impact on the way in which determining authorities (Comcare, Telstra, Australia Post, the Australian Defence Force, etc.) are required to interpret the provisions of the SRC Act regarding the distinction between “injury” and “disease”.

The effect of these decisions is, according to the Full Federal Court in Australian Postal Corporation v Burch, that the definitions of “injury” and “disease” at s4 of the SRC Act are not mutually exclusive. Accordingly a claimant can seek to have their claim initially assessed under the easier “injury” test (whether the injury arose out of or in the course of the employment) rather than the “disease” test (whether there was a “material contribution” made by the employment).

This Regulation Impact Statement concerns a proposal for amendment to the SRC Act to restore Parliament’s original intention that the definitions of “injury” and “disease” in the Act be mutually exclusive.

The Problem

The decisions mentioned above have broadened the way in which courts have interpreted the definition of “injury” beyond the scope intended by Parliament. For example, there have been claims accepted by the courts as an “injury”, in which the employee suffered a stroke, a heart attack or the consequences of a pre-existing back condition while in the workplace. The claimant did not, because of the courts’ interpretation of the SRC Act, have to demonstrate that the employment made a material contribution to the condition, as they would if the condition were considered as a “disease”.
If the court decisions were to be treated strictly as precedents by determining authorities under the SRC Act, the consequence would be that the Commonwealth workers’ compensation scheme would be liable in respect of a wider range of conditions than was intended under the Act.

The additional outstanding liability to the scheme which would arise from such treatment was estimated by Comcare’s actuary in 1998 at $75.4 million in total (some 6.6%). This estimate was a “worst case” scenario based on extrapolation of national statistics on the occurrence of the classes of conditions described above onto the insured population under the Commonwealth scheme, and on the assumption that all claims lodged in these classes would be accepted. However, since then there have been far fewer claims of this type than expected. In the light of actual claims data now available, the actuary has revised the estimate downwards to a loading of 1.2% of Commonwealth claims. It is now estimated that the impact of claims of this type will be $6.5m, with a total of some $10m for the scheme as a whole, though it must be stressed that this estimate is uncertain in view of the sparse data available.

In the short term, the problem has been addressed by taking a common approach across the jurisdiction of interpreting the scope of the courts’ decisions narrowly. This approach is discussed further at Option b) below.

Objectives

The government’s primary objective is to minimise the human and financial cost of work-caused injury and disease while at the same time providing adequate compensation and support for long term incapacitated employees.

In this context, the government is seeking to achieve a balance between its obligations to employees injured at work and the need to ensure that the costs of the scheme are maintained at a suitable level.

Identification of Options

Options available for managing the problem in the Commonwealth jurisdiction include:

a) no change to current SRC Act provisions and following the precedents established by the courts;

b) no change to current SRC Act provisions, but maintaining a policy approach which takes a narrow view of the scope of the courts’ decisions - in such a view, a condition would only satisfy the easier “injury” test if it involved a “definable physiological event” and which, on the medical evidence, was not part of the natural progression of a pre-existing disease – a condition which was such a natural progression would be considered under the “disease” test;

c) restoring the original intention of the SRC Act by redefining “injury” and “disease” to ensure that the definitions are mutually exclusive – this would have the result that a condition of the type described above would only be compensable if the claimant could demonstrate a material contribution to the condition by their employment.

Impact Analysis

The analysis which follows focuses on the impact of regulatory options on major stakeholders: GBEs, employees and the Government. The direct impact of these decisions on business for the purposes of the SRC Act is limited to Government Business Enterprises and licensed corporations.
Option a) No change to Act and follow court precedents

Costs to GBEs

i) increased workers’ compensation premiums or self-insurance costs – based on claims experience and actuary’s estimates of increases in outstanding liabilities, this might add more than 1% to current costs;

ii) increased number of complex claims (involving the need to gather extensive medical evidence) due to increased awareness of possibility of acceptance of claims under “injury” test – number of additional claims is likely to be relatively small, though cost would be high.

Benefits to GBEs

i) none readily identifiable.

Costs to Employees

i) none readily identifiable.

Benefits to Employees

i) easier acceptance by determining authorities of liability for compensation in a relatively small number of cases, as there would be no need to establish material contribution of employment to the condition.

Costs to Government

(i) increase in outstanding liabilities to the scheme – estimated at $10 million;

(ii) increased number of complex claims (involving the need to gather extensive medical evidence) due to increased awareness of possibility of acceptance of claims under “injury” test – number of additional claims is likely to be relatively small, though cost would be high.

Benefits to Government

i) no requirement for resources to be allocated to change in legislation;

ii) probable reduction in number of claims taken down litigation path.

Option b) Narrow policy view of court decisions

Costs to GBEs

i) probable increase in litigation as claimants try to use broader view of court precedents;

ii) uncertainty of outcomes while distinction between “injury” and “disease” remains unclear.

Benefits to GBEs

i) limits potential for increase in premiums or self-insurance costs relative to option a).

Costs to Employees

i) need to satisfy more restrictive “disease” test for some claims;
ii) uncertainty of outcomes while distinction between “injury” and “disease” remains unclear.

Benefits to Employees

i) retains some additional access to assessment of claims under “injury” test beyond that originally envisaged – for example, where there is no medical evidence of a physiological event being the normal progression of a pre-existing disease, it may be possible for the event to satisfy the “injury” test;

ii) possibility of success in litigation based on existing precedents.

Costs to Government

i) probable increase in litigation as claimants try to use broader view of court precedents;

ii) additional resource requirements for coordination of consistent policy approach across the jurisdiction – costs will be minor unless there is a significant increase in claims in this category.

Benefits to Government

i) limitation on potential cost of claims.

**Option c) Redefine “injury” and “disease” to make mutually exclusive**

Costs to GBEs

i) none readily identifiable.

Benefits to GBEs

i) probable reduction in litigation over a small number of rejected claims whose determination hinges on this issue;

ii) increased certainty of legal distinction between “injury” and “disease”.

iii) probable reduction in workers’ compensation premiums or self insurance costs relative to the status quo.

Costs to Employees

i) need to satisfy more restrictive “disease” test for some claims, typically those in the categories described above.

Benefits to Employees

i) increased certainty of legal distinction between “injury” and “disease” and therefore tests which need to be satisfied.

Costs to Government

i) cost of resources required for work on change in legislation and associated jurisdictional advice.
Benefits to Government

i) probable reduction in litigation over rejected claims;
ii) increased certainty of legal distinction between “injury” and “disease”;
iii) restoration of original intention of legislation;
iv) saving of potentially significant increase in outstanding liability to workers’ compensation scheme.

Consultation

There has been regular consultation between Comcare and agencies in the jurisdiction since the distinction between “injury” and “disease” became an issue following the High Court’s decision in Zickar v MGH Plastic Industries (1996).

This culminated in the promulgation of Jurisdictional Policy Advice by Comcare which essentially sought the cooperation of workers’ compensation determining authorities in following the policy approach described in Option b) above. This was seen as the best available option in the short term, pending resolution of the question of the need for legislative amendment. Determining authorities generally support the proposition that restoring the original intent of the legislation is necessary in the longer term.

In Kennedy Cleaning Services v Petkoska (2000), the High Court has now affirmed the Zickar decision and, by extending the concept of “injury” made it more difficult to maintain the policy approach described. Further Jurisdictional Policy Advice has been issued taking account of the Court’s latest decision.

The matter has also been the subject of information papers considered on a number of occasions by the Safety, Rehabilitation and Compensation Commission (SRCC), which is a tripartite body representing employers, employees and the regulator in the Commonwealth jurisdiction. The Commission has not expressed detailed views on the options available, but has endorsed the change canvassed at Option c) as part of the proposed legislative amendment program for the SRC Act. Employee organisations have been made aware of the issue through the SRCC, as indicated above, but have not expressed a specific view.

Conclusion and Recommended Option

Option a) would have costs to the workers’ compensation scheme and be inimical to the original intention of the legislation.

Option b) would be a means of restoring, by administrative channels, the original intention of the legislation. Given the court precedents, however, it would probably lead to a significant increase in litigation and would be difficult to defend effectively.

Option c) would restore the original intention of the legislation and avoids a significant part of the costs associated with the courts’ broader interpretation of the definition of “injury”. It provides a reasonable balance between the interests of claimants, employers and the scheme.

In view of the disadvantages associated with the other options, it is considered that only Option c) provides a suitable solution to problems which have arisen in connection with the current definitions.
Implementation and Review

Implementation of the proposed program of change will involve three stages:

i) amendment of the SRC Act;

ii) notification of the changes to determining authorities and replacement of the current Jurisdictional Policy Advice;

iii) provision of advice by Comcare to assist agencies with management of cases arising under changed provisions.

It is considered that there will be no net additional cost to employers as a result of the new arrangements.

The effectiveness of the proposed new provisions will be reviewed by Comcare on a continuing basis through a requirement for determining authorities to report on any cases which may hinge on interpretation of the revised definitions.
REGULATION IMPACT STATEMENT

Safety, Rehabilitation and Compensation Act 1988

Rehabilitation providers

Introduction

The Safety, Rehabilitation and Compensation Act 1988 (SRC Act) establishes a fully funded system of compensation and rehabilitation for Commonwealth employees who are injured in the course of their employment.

The Commonwealth workers’ compensation scheme recognises the importance to both the employee and the employer in arranging a return to work as quickly as possible, and has processes and incentives in place to achieve this. These include the requirement for employers to provide suitable duties, payment for rehabilitation expenses, a benefit structure with incentives for return to work and a general orientation to return to work rather than long term incapacity. The system of rehabilitation provided under the SRC Act relies on the services of rehabilitation providers.

Since these providers play a critical role in the early and safe return to work of injured employees, the SRC Act (s34) contains provisions which give Comcare the responsibility to ensure that rehabilitation providers have the qualifications, proven effectiveness, availability and cost efficiencies to deliver quality services to employers and employees.

Providers are broadly defined as individuals or organisations with relevant rehabilitation related qualifications who can demonstrate the capacity to deliver services in accordance with Comcare’s occupational rehabilitation model and standards of service delivery.

The occupational providers come from a wide variety of professional backgrounds such as occupational therapy, physiotherapy, rehabilitation counselling and psychology and all of them are able to demonstrate the capacity to work with agencies with the goal of successfully returning injured employees to the workforce thereby reducing the duration and cost of compensation claims.

The number of rehabilitation providers currently approved under section 34 is 175.

Problem

The approval of rehabilitation providers is a means of protecting injured employees, in terms of ensuring that persons providing treatment and services meet acceptable standards. During 1997-98, Comcare reviewed and redeveloped its Approved Rehabilitation Provider Quality assurance program and the related approval and re-approval process. The new Approved Rehabilitation Provider standards and re-approval process are based on a set of minimum, outcome based standards that enable reliable self-assessment of performance. In the main, existing approval and re-approval procedures are well accepted and executed efficiently.

Comcare has however identified areas for improvement in the procedures.
1. Fixed term arrangements with rehabilitation providers have been made on an administrative basis but there is no specific provision for this in the legislation. Furthermore, the current system does not provide adequate legal authority to ensure that in the case of a provider demonstrating ineffective or cost inefficient or fraudulent practices, or over servicing, the provider may have their approval revoked. Comcare has on occasion had to request that an approved provider cease to offer services. This request has been made following either complaints received about the provider’s practices or evidence of fraudulent practice. In these instances Comcare has implemented agreed administrative procedures to support the revocation of the provider’s approval.

2. Under the current arrangements Comcare does not charge approval fees. As a consequence Comcare is unable to recover processing costs and providers who are clearly unable to deliver the model occupational rehabilitation services are not discouraged from proceeding with their application.

3. Comcare currently defines the roles and responsibilities of providers and sets formal guidelines for approval of prospective rehabilitation providers. When providers are unable to demonstrate conformance with these responsibilities and guidelines, Comcare has no legal authority to formally revoke the provider’s approval.

Objectives

The aim of government action is to ensure rehabilitation providers meet standards sufficient to provide quality occupational rehabilitation services to injured employees and reduce liabilities by minimising time lost from productive work through ensuring tightly managed rehabilitation programs.

In particular, the objectives of government action are to

- Formalise the period of approval with reviews at the end of the period;
- Introduce a user pays system whereby providers who are committed to providing services to the Commonwealth will pay for the processing of their application;
- Allow revocation of approval of rehabilitation providers for serious misconduct or failure to meet agreed standards; and
- Allow Comcare to codify existing standards and guidelines which clearly articulate the roles and responsibilities of a provider.

Identify regulatory and non-regulatory options

Option one – Status quo

Continue with the current arrangements as outlined in the Background and Problem sections.

Option two – Amend section 34 of the SRC Act

Amend section 34 of the SRC Act to:
1. Formalise the period of approval at three years with reviews at the expiration of the three year period.

2. Impose a fee for approving rehabilitation providers. The fee would be prescribed by regulations.

3. Provide that in the case of a rehabilitation provider demonstrating ineffective or cost inefficient or fraudulent practices or over servicing, the provider may have their approval revoked.

4. Enable Comcare to codify existing guidelines and standards for the approval and reapproval of rehabilitation providers.
Assessment of the costs and benefits of options

Table 1: Benefits and Costs to particular groups

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<tr>
<th>Stakeholders</th>
<th>Benefits Option One</th>
<th>Costs Option One</th>
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<tbody>
<tr>
<td>Comcare, Government</td>
<td>▪ In the main, active providers are delivering a quality service.</td>
<td>▪ Current costs for the approval process and monitoring and communications exercises are not fully recovered from industry and are borne by the Commonwealth. These costs are estimated at $20,000 per annum. (These costs have been partially offset by revenue raised from training courses – approved providers must undergo a training program provided by Comcare).</td>
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<td></td>
<td>▪ Some registered providers are not meeting service delivery requirements or are providing services of variable quality. Therefore less efficient rehabilitation services (that is, a lower level of return to work) possibility of higher premiums as a result.</td>
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<tr>
<td>Rehabilitation providers</td>
<td>▪ Providers do not have to contribute fully to meeting the costs of the approval process and monitoring and communications exercises. These costs are estimated at approximately $400 per provider over three years.</td>
<td>▪ Possible damage to their credibility if the industry is poorly monitored and substandard services are available.</td>
</tr>
<tr>
<td>Users of rehabilitation services, the employing Commonwealth agency</td>
<td>▪ Users/purchasers of rehabilitation services are generally provided with a quality service.</td>
<td>▪ Some registered providers are not meeting service delivery requirements or are providing services of variable quality. Therefore less efficient rehabilitation services (that is, a lower level of return to work) possibility of higher premiums as a result.</td>
</tr>
<tr>
<td>Stakeholders</td>
<td>Benefits Option Two</td>
<td>Costs Option Two</td>
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| Comcare, Government              | ▪ Greater confidence that they are purchasing high quality services from ethical providers who will achieve satisfactory outcomes.  
▪ Establishment of an efficient and transparent process to handle performance management issues.  
▪ Possible cost efficiencies to Government through potentially lower workers’ compensation premiums if early return to work outcomes are achieved because of the quality and efficiency of the business operation of registered providers.  
▪ Fees will cover administrative expenses currently borne by the Commonwealth for the approval process.  
▪ Deters frivolous applications.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | No new costs to Government                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Rehabilitation providers         | ▪ Improving the approval process to ensure only quality service bodies are approved would enhance the credibility of the rehabilitation industry.  
▪ This option provides industry with a transparent process through the establishment of a clear set of performance standards.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | ▪ Approval fees for new applicants as prescribed. (There are approximately 15-20 enquiries annually from prospective providers in relation to approval applications, of these approximately 10-12 proceed to application.)  
▪ Re-approval fees every three years as prescribed. The current stock of providers (approximately 180) will require re-approval in December 2001 (approximately).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Users/purchasers of rehabilitation services | ▪ The provision of high quality services from ethical providers who will achieve satisfactory outcomes.  
▪ Achievement of a quick and satisfactory return to work.  
▪ Better workplace relations and productivity through quality of workplace services delivered.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | ▪ Possibility that approved providers will recoup the cost of approval from purchasers of rehabilitation services. However, this would be spread over a range of services provided during the period of accreditation and would therefore not be significant. For example, in the 1996-98 approval period, 90% of participating providers completed more than 4 service plans pa. with a median income of $1275 per service plan.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
<table>
<thead>
<tr>
<th>Stakeholders</th>
<th>Benefits Option Two</th>
<th>Costs Option Two</th>
</tr>
</thead>
<tbody>
<tr>
<td>The employing Commonwealth agency (Under the SRC Act it is the employer that has responsibility to determine that a rehabilitation program is to be undertaken, to engage an approved provider and agree on proposed programs and costs.)</td>
<td>▪ Increased likelihood of services of an acceptable standard. &lt;br&gt;▪ Achievement of a quick and satisfactory return to work. &lt;br&gt;▪ Possible decrease in premiums if a successful return to work is initiated.</td>
<td></td>
</tr>
<tr>
<td>Community</td>
<td>▪ Rehabilitation providers have a role to play in reducing the costs of workers compensation to the Commonwealth and therefore the community.</td>
<td></td>
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</tbody>
</table>
Public Consultation

The existing approved providers and their professional associations have been consulted widely and in depth about standards, approval and re-approval processes. The consultation occurred in 1997-1998. Providers were generally supportive of the standards and processes, and actively contributed to the design of the quality assurance program. In particular providers supported the achievable and meaningful standards that were established. There was also strong support from providers for the opportunity for performance feedback, and self assessment that was built into the quality assurance program.

The issue of charging fees has been raised at various Rehabilitation Provider meetings over the last four years (the legislation was originally proposed in 1994 but was not carried forward). There has been no recorded objection to the proposal to introduce approval fees or to the proposal to charge for processing reapproval applications.

During the first half of 2000 Comcare held a forum with Rehabilitation Providers on this issue. The forum covered implementation of the proposed amendments, and sought feedback. There was no recorded dissent in this process.

Conclusion and recommended option

The preferred option is option two, amend section 34 of the SRC Act to allow Comcare to charge a fee for approving rehabilitation providers, to amend the approval provisions and to provide for re-approval and revocation of approval.

This option is preferred over the status quo since it gives Comcare appropriate legal authority to implement existing quality assurance programs for service providers, and allows Comcare to recover some of the costs associated with the approval and reapproval of rehabilitation providers.

Implementation and Review

The proposed changes will be effective from the date of amendment. Comcare will manage the process, reporting to the Safety, Rehabilitation and Compensation Commission.

The current stock of providers will not be required to go through the new ‘approval process’ they will however be subject to the re-approval process when the term of their current approval expires (on or around December 2001).

The proposed amendment will be reviewed following the initial period of registration (three years after implementation). The review will be undertaken by Comcare and would involve a mixture of quantitative data (eg provider records) and qualitative data (questions asked in a provider survey etc). Comcare will report on the findings of the review to the SRC Commission.
REGULATION IMPACT STATEMENT

Safety, Rehabilitation and Compensation Act 1988

Permanent impairment payments for loss of hearing

BACKGROUND

The Safety, Rehabilitation and Compensation Act 1988 (SRC Act) provides compensation coverage to employees of the Commonwealth (including licensed authorities and corporations) and the ACT Government. The SRC Act provides for lump-sum compensation for work-related injuries resulting in permanent impairment.

Under the previous legislation (the Compensation (Commonwealth Government Employees) Act 1971) compensation was paid on the basis of a restrictive table of maims, with the level of payment being determined by the loss, or loss of the efficient use of, various parts of the body.

With the introduction of the SRC Act, that approach was replaced by one which determined impairments using a "whole person" approach, similar to that used under the Veterans’ Entitlement Act 1986. The whole person approach allows the degree of impairment to be assessed on a more accurate basis and expressed as a percentage loss of the use of the ability of the person to undertake normal living activities.

This Regulation Impact Statement concerns a proposed reduction to the current whole person percentage applied for hearing loss to bring the Commonwealth scheme into line with other jurisdictions.

PROBLEM

The SRC Act provides that lump sum compensation will not be payable if the impairment does not exceed the minimum threshold of 10% whole person, except where the impairment results from the loss of a finger, toe, sense of taste or smell. In those cases, no minimum threshold is set. Thus the SRC Act has previously recognised that, in the case of certain types of injuries, the 10% whole person threshold may be too high.

In the case of hearing loss, the approved Permanent Impairment Guide specifies that the percentage whole person impairment is calculated by dividing the percentage loss of hearing by two. Thus in order to meet the 10% whole person threshold, a person must have at least a 20% loss of hearing.

This represents a significant hearing loss and is the highest threshold of all Australia's workers' compensation jurisdictions.

The thresholds operating in other jurisdictions are:

- New South Wales 6% binaural
While the "whole person" treatment of hearing loss has provided a more accurate assessment regime, it has resulted in inequities for claimants suffering a significant level of hearing loss because they have been effectively excluded from qualifying for compensation.

The Safety, Rehabilitation and Compensation Commission (SRCC) sought expert advice as to the effects of the current 20% binaural hearing loss threshold. At its 3 December 1997 meeting, the SRCC considered a presentation from Dr John Macrae, Senior Research Scientist, National Acoustics Laboratory.

Dr Macrae described the relationship between percentage hearing loss and the requirement for a hearing aid in brief:

- at a binaural loss of 7%, 10% of persons require a hearing aid;
- at a binaural loss of 10%, 33% of persons require a hearing aid;
- at a binaural loss of 15%, 66% of persons require a hearing aid;
- at a binaural loss of 20%, 100% of persons require a hearing aid.

Dr Macrae's conclusion was that the current Commonwealth threshold was too high. His preference was for 5-7% binaural loss as the threshold, combined with an increment of around 5% before further compensation would be considered.

**OBJECTIVES**

The government's primary objective is to minimise the human and financial cost of work-related injury and disease while at the same time providing adequate compensation and support for long-term incapacitated employees.

In this context, the government is seeking to achieve a balance between its obligations to employees injured at work and the need to ensure that the costs of the scheme are maintained at a suitable level.

**OPTIONS**

Option (a)

Seek consistency with some States by introducing a 5% threshold for compensation (in line with Dr Macrae's opinion) with 5% increments for subsequent payments for hearing loss; or
Option (b)

Opt for the Heads of Workers' Compensation Authorities (HWCA) model of 10% with a 5% loss being a trigger for rehabilitation1

A further option, of retaining the status quo, is not considered practical. It would be difficult to justify doing nothing given that expert medical opinion and the view of the SRCC is that the current threshold is too high. The current arrangements also mean that the Commonwealth scheme is inconsistent with the threshold arrangements of other jurisdictions resulting in a situation where Commonwealth employees may be significantly disadvantaged by comparison. This option will not be considered further.

IMPACT ANALYSIS (COSTS AND BENEFITS)

Option (a)

- there should be legislative amendment setting out the hearing loss threshold at 5% binaural loss; and
- subsequent claims must demonstrate a further 5% deterioration from the previous loss before a further payment may be awarded.

This option would lower the threshold for permanent impairment for hearing loss from 20% binaural loss (10% whole person) to 5% binaural (2.5% whole person). This would allow more employees with hearing loss to be successful in a permanent impairment claim.

Comcare has assumed that there would be an additional 50 permanent impairment claims per year. The low future rate is on the basis that many agencies with high claims (Australian National Rail and QANTAS) are no longer covered by Comcare. It has been estimated that the average cost of such permanent impairment claims would be $18,512. These assumptions would mean a cost of $0.9 million per annum on an ongoing basis. The ongoing cost would be substantially offset by an expected increase in premiums collected from employing agencies.

On the basis of data provided by the ADF, Comcare considers that the ADF would have 200 permanent impairment claims a year which would equate to a cost of $3.7 million. The ADF have a higher rate of hearing loss claims than Comcare.

The benefits and costs of this option to stakeholders are summarised below:

Cost to GBEs

i. increased workers' compensation premiums or self insurance costs;

1 In May 1997 the HWCA provided a report “Promoting Excellence - National Consistency in Australian Workers' Compensation”. This report advised that hearing loss injuries presented special problems and minor claims could result in small compensation payments but large transaction costs. The setting of a threshold therefore enabled more minor and non-disabling hearing loss claims to be screened out in the interests of administrative efficiency. HWCA recommended that a 10% binaural hearing loss threshold should apply.
ii. increased number of claims that will meet the lower threshold. Future costs will be funded through increased premiums or self-insurance.

**Benefits to GBEs**

i. perception of fairer treatment of impaired claimants

**Cost to Employees**

i. none readily identifiable.

**Benefits to Employees**

i. easier acceptance of liability for permanent impairment in some cases.

**Costs to Government**

i. increased workers' compensation premiums or self insurance costs;
ii. increased number of claims that will meet the lower threshold;
iii. increase to outstanding claims liabilities for scheme;
iv. A cost of $4.6 million annually. Future costs for ADF estimated at $3.7 million per annum would be funded from the Commonwealth Budget. For employers operating under premium arrangements or self insurance there will be no continuing costs to the Commonwealth Budget.

**Benefits to Government**

i. reduction in representations from employees who believe they are disadvantaged under the current arrangements;
ii. perception of fairer treatment of impaired claimants.

**Option (b)**

- HWCA model of 10%;
- Subsequent claims must demonstrate a further 5% deterioration from the previous loss before a further payment may be awarded;
- The amendment only to apply to new claims where there is an injury subsequent to the commencement of the amendment.

Comcare has assumed that there will be an additional 40 permanent impairment claims per year. It has been estimated that the average cost of such claims would be $18,800. The higher average cost arises from the fact that the minimum payment will commence at 10% (rather than 5%) so overall the average will be at a higher level than under option (a). These assumptions would mean a cost of $0.8 million per annum on an ongoing basis. The ongoing cost would be substantially offset by an expected increase in premiums collected from employing agencies.
On the basis of data provided by the ADF (which is not covered by the premium system), Comcare considers that the ADF would have about 150 permanent impairment claims a year which would equate to a cost of $2.8 million per annum.

The benefits and costs of this option to stakeholders are summarised below.

**Costs to GBEs**

i. increased workers' compensation premiums or self insurance costs

ii. increased number of claims that will meet the lower threshold. Future costs will be funded through increased premiums or self insurance.

**Benefits to GBEs**

i. perception of fairer treatment of impaired claimants.

**Costs to Employees**

i. none readily identifiable.

**Benefits to Employees**

i. easier acceptance of liability for permanent impairment in some cases.

**Costs to Government**

i. increased workers' compensation premiums or self insurance costs;

ii. increased number of claims that will meet the lower threshold;

iii. increase to outstanding claims liabilities to scheme;

iv. A cost of $3.6 million annually. Future costs for the ADF estimated at $2.8 million per annum would be funded from the Commonwealth Budget. For employers operating under premium arrangements or self-insurance there would be no continuing costs to the Commonwealth budget.

**Benefits to Government**

i. reduction in representations from employees who believe they are disadvantaged under the current arrangements;

ii. perception of fairer treatment for impaired claimants.

**CONSULTATION**

This matter has been the subject of consideration by the SRCC which is a tripartite body with representatives of employers and employees and expert advisers in the Commonwealth jurisdiction. The SRCC includes representatives of Commonwealth Departments and Agencies including GBEs and also represents the interests of employees.
The licensees and the Department of Defence, which administers the military compensation scheme under delegation from the Chief Executive Officer of Comcare, have been consulted and are supportive of option (a).

CONCLUSION

Option (a) would provide consistency between the Commonwealth and some States and Territories, would be consistent with expert option and is the recommended approach of the SRCC.

Option (b) however has the advantage of the support of the HWCA. It has also been adopted by three States.

Given the costs involved and the need for scheme efficiency, the preferred option is option (b), Adoption of this option would provide an increased entitlement to injured employees.

IMPLEMENTATION AND REVIEW

Implementation of the proposed program of change will involve three stages:

i. an amendment of the SRC Act;
ii. notification of the changes to determining authorities;
iii. provision of advice by Comcare to assist agencies with management of cases arising under changed circumstances.

The effectiveness of the proposed new provisions will be reviewed by Comcare, on a continuing basis, reporting to the SRCC.
NOTES ON CLAUSES

Clause 1 – Short title

1. The Bill, when enacted, will be known as the Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2000.

Clause 2 – Commencement

2. This clause specifies when the various provisions of the Act are to commence. Subclause 2(1) provides that, subject to this clause, the Act commences on the day on which it receives Royal Assent.

3. Subclause 2(2) provides that, subject to subclauses 2(7) and (8), items 5, 6 and 7 of Schedule 1 and the items of Parts 6 and 8 of Schedule 2 commence on a day to be fixed by proclamation.

4. Subclause 2(3) provides that specified penalty provisions in Schedules 1, 2 and 3 will commence 28 days after the Act receives Royal Assent.

5. Subclause 2(4) provides that Part 3 of Schedule 2 commences 6 months after the day on which the Act receives Royal Assent.


7. Subclause 2(6) provides that Part 11 of Schedule 2 has a variable commencement date depending on the commencement of anticipated changes to administrative law arrangements.

8. Subclause 2(7) provides that where an item referred to in subclause 2(2) does not commence within 6 months of the Act receiving Royal Assent, then that item will commence on the first day after the end of that period.

9. Subclause 2(8) provides that in the event that items 47 and 48 of Schedule 2 do not commence before 1 July 2001, then they are taken to have been repealed on that day.

Clause 3 – Schedules

10. This clause provides that an Act that is specified in a Schedule is amended or repealed as set out in that Schedule, and other items in a Schedule have effect according to their terms.

SCHEDULE 1 – AMENDMENT OF THE INDUSTRIAL CHEMICALS (NOTIFICATION AND ASSESSMENT) ACT 1989

1.1 This Schedule contains amendments to the Industrial Chemicals (Notification and Assessment) Act 1989 (ICNA Act) as well as transitional provisions related to those amendments.
Item 1 – Section 5 (definition of assessment report)

1.2 Item 1 contains an amendment to the definition of assessment report in section 5 of the ICNA Act. The proposal is a consequential amendment to the insertion of proposed section 68A (see item 40).

Item 2 – Section 5 (definition of Director)

1.3 Item 2 substitutes a new definition of Director in section 5 of the ICNA Act. This amendment is related to the proposal to change the title of the Director in item 49.

Item 3 – Section 5

1.4 Item 3 will insert a new definition of existing chemical in section 5. This proposal is related to the proposed section 68A (see note to item 40). The term existing chemical is already used by NICNAS administratively to refer to chemicals listed on the inventory.

Item 4 – Section 5 (definition of new synthetic polymer)

1.5 The definition of ‘new synthetic polymer’ in section 5 of the ICNA Act does not tally with the definitions of ‘synthetic polymer’ and ‘synthetic polymer of low concern’. The definitions of ‘polymer’, ‘synthetic polymer’ and ‘new synthetic polymer’ should all build on one another. The proposal contained in item 3 overcomes this problem by amending the definition of new synthetic polymer in section 5 by substituting the words ‘synthetic polymer’ for ‘polymer’ wherever occurring.

Item 5 – Section 5

1.6 Item 5 inserts a definition of prescribed reactant in section 5 of the ICNA Act. This proposed amendment is related to the proposal in item 6.

Item 6 – Section 5 (paragraph (a) of the definition of synthetic polymer of low concern)

1.7 ‘Synthetic polymers of low concern’ are regarded as lower risk chemicals and are subject to less stringent assessment under the ICNA Act than other new industrial chemicals.

- Section 24A of the Act provides that the only document required to accompany an application for assessment for a synthetic polymer of low concern is a prescribed form verified as correct by the applicant.

1.8 The term synthetic polymer of low concern is defined in section 5 of the ICNA Act. The definition provides for certain key details to be prescribed in regulations (regulation 4A of the Industrial Chemicals (Notification and Assessment) Regulations refers).

1.9 Among other requirements, to be a synthetic polymer of low concern a synthetic polymer must have a number average molecular weight (NAMW) of greater than 1000.
1.10 The proposal is to amend section 5 to provide that a group of synthetic polymers, known as polyesters, can be considered synthetic polymers of low concern irrespective of their NAMW.

- Most polyesters are considered a low risk to the health and the environment at any number average molecular weight.

1.11 Many types of polyester have a NAMW of less than 1000, particularly those now being imported and manufactured. This worldwide technological trend towards a lower NAMW is being driven by environmental considerations, specifically, the demand for lower emissions which leads to lower environmental risk. This can be achieved by reducing the solvent content of polymer solutions, which in turn reduces the NAMW. There are also health benefits from solvent reduction. Presently, companies introducing polyesters cannot benefit from the lower fees and less onerous notification requirements that apply to other synthetic polymers of low concern.

1.12 The effect of the amendment contained in item 6 will be to add an additional category of synthetic polymer of low concern to the definition of that term in section 5. The new category describes polyesters made from prescribed reactants and is in proposed paragraph (a)(ii) of the definition. The term prescribed reactant is defined in the proposed amendment in item 5 and will depend on a table of prescribed reactants to be incorporated in the Regulations at a future date.

Item 7 – Transitional provision

1.13 This item is a transitional provision related to the proposed amendments in items 5 and 6. The effect of the provision is to allow applications concerning polyesters (currently dealt with as new industrial chemicals) to be treated as applications for PLCs after the amendments come into force. Any fees paid that were above the fee payable for a PLC assessment are to be refunded.

Item 8 – At the end of section 11

1.14 The ICNA Act does not clearly state what the effect is of listing a chemical on Australian Inventory of Chemical Substances (AICS), although the effect is implied by different provisions of the Act. Item 8 will insert a new subsection in section 11 (Inventory) to clarify the effect of listing a chemical on AICS.

1.15 Essentially, proposed subsection 11(3) provides that chemicals listed on AICS need not go through the assessment process required of new industrial chemicals in order to be manufactured or imported. Indeed, this is the essential distinction between new and existing chemicals, as regulated by NICNAS.

1.16 A note to proposed subsection 11(3) warns that the proposed subsection is not an exhaustive description of the effect or consequences of listing a chemical on AICS. For example, one effect not described is the practice of selecting chemicals from AICS for review as priority existing chemicals. It must also be remembered that listing a chemical on AICS
does not exempt the chemical from regulatory requirements imposed under other legislation (State or Federal).

**Item 9 – Subsection 18A(1)**

1.17 Item 9 contains an amendment to subsection 18A(1) changing the reference ‘subsection 19(5)’ to ‘section 19’. This proposed amendment is a consequence of the insertion of a new version of section 19 as proposed in item 10.

**Item 10 – Section 19**

1.18 Section 19 of the ICNA Act sets out procedures for the transfer of an industrial chemical from the confidential section to the non-confidential section of the Inventory. The current section 19 is difficult to read and therefore difficult to apply in practice. Item 10 contains a plain English redraft of this section. This proposed redraft is not intended to change policy or procedure, but alters the wording to make it easier to follow by:

- reviewing definitions in subsection (1);
- minimising cross-references; and
- adopting clearer language where possible.

**Item 11 – Transitional provision**

1.19 Item 11 contains a transitional provision related to the proposed amendment in item 10.

1.20 The provision essentially preserves matters under the old section 19 that are ongoing at the time the new section commences.

**Item 12 – Subsection 21(1) (penalty)**  
**Item 13 – Subsection 21L(4) (penalty)**  
**Item 14 – Subsection 21W(5) (penalty)**

1.21 A series of amendments in this Bill, like those in items 12, 13 and 14, will convert fines expressed in monetary terms to penalty units.

1.22 Penalty units were introduced in 1992. They are a way of adjusting fines for inflation without having to amend every piece of legislation. Section 4AB of the *Crimes Act 1914* converts fines expressed in dollar amounts to penalty units. This has the effect of increasing the maximum penalties, as in 1997 the value of a penalty unit was increased from $100 to $110. For example, the fine in s.58(8) of the ICNA Act is expressed to be $6,000, but in reality it is $6,600, by virtue of the operation of s.4AB of the Crimes Act.

1.23 Only recently enacted or recently amended offences are expressed as penalty units, which explains why there are units for some offences in the ICNA Act and dollar amounts for
others. This is an unsatisfactory and potentially confusing situation, particularly as the fines expressed as dollar amounts do not accurately convey the true maximum penalty. This Bill accordingly amends all provisions referring to pecuniary penalties in the Acts which are amended by the Bill, by expressing all fines as penalty units.

1.24 Items 12, 13 and 14 will convert the penalties in the relevant provisions of the ICNA Act into penalty units.

Item 15 – Subsection 31(2)
Item 16 – Subsection 34(2)
Item 17 – Subsection 35(1)

1.25 Division 3 of Part 3 of the ICNA Act currently requires that a full public report and summary report be prepared following every assessment with the exception of synthetic polymers of low concern (PLCs) for which only a full public report is prepared.

1.26 Subsection 34(2) provides that in the case of a chemical that is a synthetic polymer of low concern, the Director of NICNAS must cause a copy of the full public report to be published in the Chemical Gazette. Subsection 35(1) requires that a summary report must be prepared for all assessments except for those in relation to PLCs.

1.27 PLCs are a class of chemicals that inherently pose little risk to human health or the environment. The changes proposed in items 15, 16 and 17 will allow the Director to publish a summary report (instead of a full public report) for PLCs. This means that publication of reports for PLCs will be in line with requirements for other new chemicals, ie only a summary report is published in the Chemical Gazette.

1.28 The full public report is quite a lengthy document and gazettal is expensive for the regulatory agency, NICNAS. The policy intention is that the full public report will still be available to the public free of charge, on request.

1.29 Item 15 contains an amendment that will omit the exception for a summary report for PLCs from subsection 31(2).

1.30 Item 16 contains an amendment that will repeal subsection 34(2) that requires the publishing of a full report for PLCs in the Chemical Gazette.

1.31 Item 17 contains an amendment that will omit the exception for a summary report for PLCs from subsection 35(1).

Item 18 – Section 36
Item 19 – Subsections 37(2) and 38(5) and (7)
Item 20 – Subsection 40(1)
Item 21 – Subsection 40(8)
Item 22 – Paragraphs 40G(1)(b) and (c)
1.32 These items contain consequential amendments flowing from the proposals in items 15, 16 and 17.

1.33 Item 18 omits the words ‘(if any)’ occurring after the reference to ‘summary report’ in section 36. A summary report will be required for all chemicals as a result of the amendments in items 15, 16 and 17.

1.34 Item 19 omits the words ‘(if any)’ occurring after references to ‘summary report’ in subsections 37(2), 38(5) and (7).

1.35 Item 20 omits the reference to publication of a full report for a PLC in accordance with subsection 34(2) (publication in the Gazette). Item 16 contains an amendment to repeal subsection 34(2).

1.36 Item 21 omits the words ‘(if any)’ occurring after the reference to ‘summary report’ in subsection 40(8).

1.37 Item 22 omits the words ‘(if any)’ occurring after references to ‘summary report’ in paragraphs 40G(b) and (c).

**Item 23 – Transitional provision**

1.38 Item 23 contains a transitional provision related to the amendments contained in items 15, 16 and 17. Those amendments will introduce a requirement to publish a summary report for synthetic polymers of low concern. At present only a full public report is published. The transitional provision will allow a full report for a PLC published in accordance with subsection 34(2) before the commencement of the amendments to be treated as complying with the new requirements.

**Item 24 – Subsection 58(8) (penalty)**

1.39 Item 24 will convert the penalty in subsection 58(8) to penalty units. (This measure is explained in the notes above on items 12, 13 and 14.)

**Item 25 – Subsection 60D(1)**

**Item 26 – Paragraphs 60E(6)(b) and 60F(5)(a)**

1.40 There are provisions in the ICNA Act for the issuing of assessment certificates (e.g. Part 3, Div 3A), but these do not apply to priority existing chemicals (PECs). The Act was previously amended to introduce special provisions for PECs, and at that time the requirement to apply and issue assessment certificates for PECs was removed. However, by an apparent oversight, some references to ‘applicant for the assessment certificate’ remain in some of the PEC provisions.

1.41 The offending references are contained in s60D(1), s60E(6)(b) and s60F(5)(a). The references are to an ‘applicant for the assessment certificate for the chemical’. Section 55, under which the applications are made, refers only to an ‘application for assessment’ and
contains no reference to certificates and there is no requirement elsewhere in the Act for certificates to be issued for PECs.

1.42 The effect of the amendments in items 25 and 26 is to omit any references to assessment certificates where they concern PECs.

1.43 The amendment in item 25 omits the reference to ‘assessment certificate’ from subsection 60D(1) of the ICNA Act.

1.44 The amendment in item 26 omits the reference to ‘assessment certificate’ from paragraphs 60E(6)(b) and 60F(5)(a).

Item 27 – Subsection 61(4) (penalty)
Item 28 – Subsection 61(5) (penalty)
Item 29 – Subsection 64(1) (penalty)
Item 30 – Subsection 64(2) (penalty)

1.45 These items will convert specified penalties into penalty units. (This measure is explained in the notes above on items 12, 13 and 14.)

Item 31 – Subsection 65(1)

1.46 Currently, the Director of NICNAS must require secondary notification of a chemical on receipt of new information submitted under s64(1). This is the effect of s65(1) which provides that the Director must require secondary notification, by notice published in the Chemical Gazette, by persons to whom the notice applies.

1.47 This means that the Director has no discretion to choose other, more appropriate, courses of action (such as screening the information and a notice in the Gazette to that effect). It also creates a potential problem of a chemical being assessed concurrently as a full assessment (as a result of the recommendation of the preliminary assessment) and under secondary notification (when prescribed events have occurred and the Director must require secondary notification).

1.48 The proposed amendment will give the Director a discretion whether to require secondary notification by replacing the word ‘must’ in s65(1) with ‘may’. The amendment will enable the Director to determine, on a case by case basis, the best course of action for handling information notified under s64(1).

Item 32 – Transitional provisions

1.49 Item 32 is a transitional provision related to the amendment proposed in item 31.

1.50 Sub item (1) will allow the Director to revoke a notice requiring secondary notification issued before the amendment in item 31 commenced if the period for secondary notification had not expired. This is in keeping with the new approach of allowing the Director discretion whether to require secondary notification.
1.51 Sub item (2) will have the effect of treating a notice revoked under sub item (1) as though the notice had never been published.

**Item 33 – At the end of section 65**

1.52 The amendments contained in item 33 will enable companies to make joint applications for secondary notification of chemicals. This would enable industry to share any fees for secondary notification of chemicals and reduce the burden on industry of providing duplicate information to NICNAS.

1.53 This issue is of concern to industry and was the object of previous amendments to the Act - see section 64 (joint notification of new information) and section 66 (joint application for exempt information).

1.54 Item 33 will add two new subsections to section 65 to allow secondary notification to be done jointly.

1.55 Proposed subsection (7) provides that 2 or more persons to whom a notice for secondary notification applies may give secondary notification jointly.

1.56 Proposed subsection (8) clarifies that any fee for a joint notification is to be shared by the parties.

**Item 34 – Subsection 67(2) (penalty)**

1.57 Item 34 will convert the penalty in subsection 67(2) to penalty units. For an explanation, see the note to items 12, 13 and 14.

**Item 35 – Subsections 68(1) and (2)**
**Item 36 – Subsection 68(3)**
**Item 37 – Subsection 68(4)**
**Item 38 – Subsection 68(5)**
**Item 39 – Subsections 68(6) and (7)**

1.58 These items contain consequential amendments related to the proposal in item 40. It is proposed to have two separate secondary notification assessment procedures, one for new chemicals under section 68 and another for existing chemicals under proposed section 68A. The amendments in items 35 to 39 alter various provisions of section 68 to clarify that section 68 will apply only to new industrial chemicals.
Item 40 – After section 68

1.59 Division 6 of Part 3 of the Act requires introducers of chemicals to make a ‘secondary notification’ of a chemical that has already been assessed if there is a change in circumstances as set out in s64 (eg the function or the use of the chemical has changed). Secondary notification applies to both new industrial chemicals and other chemicals that have been assessed by NICNAS, but in all cases of secondary notification only the assessment procedure for new industrial chemicals is followed (see s68, applying s32).

1.60 This means that for PECs, there is one procedure for the primary assessment and a completely different procedure following secondary notification. This anomaly has existed since 1997 when PEC assessment was changed to provide for both preliminary and full assessments and to allow for greater transparency, timeliness, accuracy and public involvement.

1.61 It is therefore proposed to establish a separate secondary notification assessment procedure for existing chemicals, which mirrors the regular assessment procedures for PECs. Essentially, this procedure will only apply to secondary notification of chemicals that have been previously assessed either as new chemicals (which are now listed on AICS) or as PECs.

1.62 Item 40 contains proposed section 68A, which will establish a separate secondary notification assessment procedure for existing chemicals (which will be defined as ‘an industrial chemical other than a new industrial chemical’ – see note to item 4).

1.63 Proposed subsections 68A(1) and (2) provide for the assessment of an existing chemical following a secondary notification. The procedure to be followed is to be in accordance with section 60A, which is the assessment procedure for PECs.

1.64 Proposed subsection 68A(3) is a deeming provision that allows all existing chemicals to be treated as PECs for the purposes of assessment under section 60A.

1.65 Proposed subsection 68(4) adopts the assessment and reporting requirements in sections 60B to 60F, which are the requirements for PECs, and includes appropriate deeming provisions to apply to secondary notification of existing chemicals.

1.66 Proposed subsections 68(5), (6) and (7) mirror the provisions of subsections 57(5) to (7) and provide for time limits and extensions on assessment and reporting.

Item 41 – Transitional provision

1.67 Item 41 is a transitional provision related to the amendment contained in item 40.

1.68 The effect of this provision will be that assessments of existing chemicals commenced under section 68 but not completed before the amendment takes effect are to be assessed as though the amendment had not yet taken effect.
Item 42 – Subsection 69(1)

1.69 Section 69 of the ICNA Act empowers the Director of NICNAS to require introducers of chemicals to provide information for the purposes of secondary notification assessment. This is restrictive, as it does not allow the Director to request information from other persons who may have relevant information, such as formulators and users.

1.70 Item 42 will amend section 69 to give the Director the additional power to require information from other persons who may have relevant information, such as ‘specified persons who the Director considers have relevant information’. There is a precedent for this in paragraph 58(2)(d), under which the Director obtains information for assessment of priority existing chemicals.

Item 43 – Transitional provision

1.71 Item 43 is a transitional provision related to the amendment contained in item 42. The effect of the provision is to save notices issued under subsection 69(1) before the new version of that subsection contained in item 42 commences.

Item 44 – Subsection 69(4) (penalty)

1.72 Item 44 will convert the penalty in subsection 69(4) to penalty units. For an explanation, see the note above to items 12, 13 and 14.

Item 45 – Paragraph 70(1)(a)

1.73 This item contains an amendment to paragraph 70(1)(a) to make it clear that assessment certificates for a secondary notification assessment will only be issued for new industrial chemicals. This proposal is in line with other amendments in this Bill (see notes to items 25 and 26 and to item 40).

Item 46 – Section 81 (penalty)
Item 47 – Section 85 (penalty)
Item 48 – Subsection 88(3) (penalty)

1.74 These items will convert the penalties in relevant provisions into penalty units. (This measure is explained in the notes above on items 12, 13 and 14.)

Item 49 – Subsection 90(1)

1.75 Item 49 amends subsection 90(1) to change the title of the Director from ‘Director of Chemicals Notification and Assessment’ to ‘Director, National Industrial Chemicals Notification and Assessment Scheme’. The new title will better reflect the Director’s role. It will also give statutory recognition to the National Industrial Chemicals Notification and Assessment Scheme (NICNAS), which is not currently referred to in the Act. A related amendment, in item 2, changes the definition of Director in section 5.
Item 50 – Transitional provision

1.76 Item 50 is a transitional provision, related to the amendment in item 49. The provision preserves the appointment of the Director and any actions or decisions taken by the Director under her old title.

Item 51 – Paragraph 102(1)(a)

1.77 Item 51 will amend paragraph 102(a) of the ICNA Act to allow decisions under proposed 68A(5) to be reviewable under the Administrative Appeals Tribunal Act 1975. Proposed section 68A is contained in item 40, and contains a new procedure for assessing existing chemicals subject to secondary notification. Under proposed 68A(5) the Minister may extend the period of assessment and report by up to 6 months.

Item 52 – Paragraph 102(1)(b)

1.78 Item 52 will amend paragraph 102(1)(b) (under which decisions of the Director may be reviewed) to change the reference from ‘19(9)’ to ‘19(7)’. The amendment is a consequence of the redraft of section 19 contained in item 10.

Item 53 – Paragraph 102(1)(b)

1.79 This item will amend paragraph 102(1)(b) to allow review of decisions of the Director under section 65(2). The amendment is related to the proposal in item 31 to give the Director discretion to require secondary notification.

Item 54 – Section 104A

1.80 Item 54 will amend section 104A (Delegation by Director) to change references to provisions of section 19. The amendment is a consequence of the redraft of section 19 contained in item 10.

Item 55 – Subsection 106(5)

1.81 Item 55 will convert the penalty in subsection 106(5) to penalty units. For an explanation, see the note to items 12, 13 and 14.

Item 56 – Paragraph 110(1)(caaa)

1.82 Item 56 will amend paragraph 110(1)(caaa) (fees for statements under subsection 19(6)) to change the reference from ‘19(6)’ to ‘19(4)’. The amendment is a consequence of the redraft of section 19 contained in item 10.

Item 57 – Paragraph 111(e)

1.83 Item 57 will amend paragraph 111(e), which determines the limits of penalties that may be prescribed in the regulations. The amendment will convert penalty limits currently
expressed in dollar amounts to penalty units. The background to this proposal is explained in the note to items 12, 13 and 14.
SCHEDULE 2 – AMENDMENT OF THE SAFETY, REHABILITATION AND COMPENSATION ACT 1988

2.1 This Schedule contains amendments to the Safety, Rehabilitation and Compensation Act 1988 (SRC Act) as well as transitional provisions related to those amendments.

PART 1 – AMENDMENTS RELATING TO DISEASE, COMPENSABLE DISEASE AND INJURY

2.2 These amendments clarify the circumstances in which an employee is entitled to compensation for injury pursuant to the Safety, Rehabilitation and Compensation Act 1988 (the SRC Act).

Item 1 – Subsection 4(1)

2.3 Item 1 proposes to insert a provision in subsection 4(1) of the SRC Act that provides that compensable disease has the meaning given by section 5A. This amendment is consequential to item 4.

Item 2 – Subsection 4(1) (definition of disease)

2.4 Item 2 proposes to repeal the definition of disease in subsection 4(1) and substitute a new definition. The SRC Act currently defines disease to mean an ailment or aggravation that was “contributed to in a material degree by the employee’s employment by the Commonwealth or a licensed corporation”. The amendment removes from this definition the reference to contribution in a material degree. The test for connection between the employment and the disease will be located in the definition of compensable disease proposed by item 4.

Item 3 – Subsection 4(1) (definition of injury)

2.5 Item 3 proposes to repeal the definition of injury in subsection 4(1) and instead provide that injury has the meaning given by section 5B. This amendment is also consequential to item 4.

Item 4 – After section 5

2.6 Item 4 proposes insertion of a new section 5A (Meaning of compensable disease), a new section 5B (Meaning of injury), and a new section 5C (Injury arising from disease, whether compensable or not).

New section 5A – Meaning of compensable disease

2.7 The SRC Act currently defines disease to mean an ailment or aggravation that was “contributed to in a material degree” by the employee’s employment with the Commonwealth or a licensed corporation.
2.8 The legislative intent behind the current provision was to establish a test requiring a claimant to prove that his or her employment was more than a mere contributing factor in the contraction of the disease. The phrase “contributed to in a material degree” was intended to ensure that the Commonwealth was not held liable to pay compensation for diseases which have little, if any, connection with employment.

2.9 New subsection 5A(1) defines *compensable disease* to mean any ailment suffered by an employee, or the aggravation of any such ailment, to which the employee’s employment by the Commonwealth or a licensed corporation contributed in a material degree.

2.10 New subsection 5A(2) provides employment is not to be taken to have contributed in a material degree to a disease unless there is a close connection between the employee’s employment and the disease. Subsection 5A(2) goes on to list a number of specific factors that may be taken into account in determining whether employment contributed in a material degree to a disease.

2.11 The factors include, but are not limited to:

- the duration of the employment, its nature and the particular tasks involved;
- the nature of, and particular tasks involved in, the employment;
- any medical predisposition of the employee to the disease;
- activities of the employee not related to his or her employment; and
- any other matters affecting the employee’s health.

*New section 5B – Meaning of injury*

2.12 The existing definition of *injury* includes a reference to a disease. The new definition of *injury* will refer to compensable disease. The definition of injury excludes non-compensable diseases, and also excludes injury, disease or aggravation as a result of certain specified actions in the employment context.

2.13 The existing definition of *injury* excludes any disease, injury or aggravation suffered by an employee as a result of 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. This definition is to be updated to include other activities which are regarded as normal management activities.

2.14 New subsection 5B(1) provides that a disease, injury or aggravation shall not be an injury for the purposes of the SRC Act if it is suffered as a result of:

- a reasonable appraisal of the employee’s performance; or
- any reasonable counselling action taken in respect of employment; or
• any reasonable suspension action; or

• any reasonable disciplinary action (whether formal or informal); or

• a failure to obtain a promotion, reclassification, transfer or benefit.

2.15 New subsection 5B(2) clarifies that, for the purposes of section 5B, a reference to an action includes a reference to anything done in connection with the action.

New section 5C – Injury arising from disease, whether compensable or not

2.16 New subsection 5C(1) will specify that where an employee is also suffering a disease which is not compensable at a time when he or she claims to suffer an injury as set out in paragraph 5B(1)(b) or (c), then the employee is taken not to have suffered an injury as claimed, to the extent that the injury is a natural progression of the disease.

2.17 Subsection 5C(2) confirms that a claimant is not prevented, by the operation of subsection 5C(1), from establishing that the disease referred to in paragraph 5C(1)(b) is compensable by showing that employment with the Commonwealth or licensed corporation contributed in material degree to the disease.

Item 5 – Subsection 7(3)

2.18 Existing subsection 7(3) provided that employment was to be taken to have contributed to a material degree to an aggravation of a disease if the incidence of the aggravation of that disease among persons suffering from it who have engaged in such employment is significantly greater than the incidence of the aggravation of that disease among persons suffering from it who have engaged in other employment in the place where the employee was ordinarily employed. Item 5 proposes repeal of the subsection, consequential to item 4. This relationship will be overtaken by the new expression of the general requirement of a ‘close connection’ between the employment and the disease.

Item 6 – Subsection 7(4)

2.19 Item 6 substitutes “compensable disease” for “disease, or an aggravation of a disease” in subsection 7(4). The amendment is consequential to item 4 which inserts the definition of “compensable disease”.

Item 7 – Paragraph 7(4)(a)

2.20 Item 7 will omit the expression “, or aggravation” in paragraph 7(4)(a). The amendment is consequential to the replacement of the definition of disease proposed in item 4.
Item 8 – Paragraph 7(4)(b)

2.21 Item 8 will omit the expression “or aggravation” in paragraph 7(4)(b). The amendment is consequential to the replacement of the definition of disease proposed in item 4.

Item 9 – Subsections 7(5) and (6)

2.22 Item 9 will omit two instances of the expression “a disease or an aggravation of a disease, if, but for that disease or aggravation, as the case may be” in subsections 7(5) and (6) and insert the phrase “a compensable disease, if but for that disease”. The amendments are consequential to the replacement of the definition of disease proposed in item 4.

Item 10 – Subsection 7(7)

2.23 Item 10 proposes to repeal and substitute subsection 7(7) which concerns the effect of false representations about not having previously suffered from a disease. The amendment is consequential to the replacement of the definition of disease proposed in item 2 and the new definitions of compensable disease in item 4; it is intended to preserve the existing effect of the subsection which reflects the new elements of the definition of disease and compensable disease.

Item 11 – At the end of subsection 7(7)

2.24 Item 11 proposes the addition of an explanatory note to remind the reader that disease, referred to in subsection 7(3), includes not only an ailment suffered by an employee but also the aggravation of such an ailment. The amendment is consequential to the replacement of the definition of disease proposed in item 4.

Item 12 – Application

2.25 Item 12 proposes that the amendments contained in Part 1 will only have effect in respect of injuries suffered after the commencement of the Part (which is to occur on Royal Assent).

PART 2 – AMENDMENTS RELATING TO INDEXATION OF NORMAL WEEKLY EARNINGS

Item 13 – Subsection 8(9)

2.26 This amendment will repeal the existing subsection 8(9) and substitute new subsections 8(9) to 8(9D). The amendment is proposed to provide that the normal weekly earnings of people who are no longer employed by the Commonwealth be updated by reference to a prescribed index.

2.27 The current provisions allow for the adjustment of the minimum amount payable to recipients of compensation, either employees or former employees of the Commonwealth or
a licensed authority, if their normal weekly earnings are either increased or reduced by way of changes in awards, agreements or other instruments affecting ordinary hours and hourly rates of pay. The updating of normal weekly earnings for former employees under the existing subsection 8(9) has, however, become problematic due to the increasingly decentralised nature of wage fixing. This has resulted in uncertainty and delay for recipients in receiving their correct entitlements.

2.28 The proposed amendment will identify an indexation date and allow for an index to be prescribed by regulation to be applied from that date to provide certainty and timeliness in the adjustment of normal weekly earnings for the recipients of compensation. The provision will allow for the annual indexation of the ‘normal weekly earnings’ by increasing the minimum amount per week payable to the employee at the date of the injury by reference to a prescribed index. The indexation date has been identified as 1 July following the date on which the Act received Royal Assent or the date of cessation of employment (which last occurs) and each subsequent 1 July. The index is applicable over the one year ending on 31 December preceding each indexation date. Regulations may specify the manner in which the increase is calculated by reference to the prescribed index.

PART 3 – AMENDMENTS RELATING TO AMOUNT OF COMPENSATION

Item 14 – Subsection 19(2)

2.29 This item will replace existing subsection 19(2) with a provision that ensures that any earnings that an employee receives from employment can be deducted from the amount of compensation.

2.30 The amendment is proposed to address an unforeseen and unintended consequence of the statutory definition of “suitable employment” in subsection 4(1) of the SRC Act. This provision has been construed such that non-Commonwealth employment is not “suitable employment” for the purposes of section 19, and any earnings from such employment should not be deducted from a claimant’s weekly compensation payments under section 19. As a consequence, an employee on compensation may receive income in excess of their pre-injury earnings from the combination of their compensation and other earnings.

2.31 This item will also insert new subsections 19(2A), (2B), (2C) and (2D) that clarify the interpretation of what constitutes a ‘week’ for the purposes of subsection 19(2). The existing subsection 19(2) requires the payment of compensation for “each of the first 45 weeks (whether consecutive or not) during which the employee is incapacitated”. Where an employee’s incapacity allows them to work part-time in a graduated return to work program, and is able to work for perhaps two days in a working week, subsection 19(2) currently requires that the 45 week period be reduced by a full week even though compensation would only have been paid for three days work (average weekly earnings less amount earned in suitable employment).

2.32 A more beneficial arrangement is favoured, and this item proposes to ensure that the reference to a week be a reference to the injured employee’s normal weekly hours (maximum rate compensation week). Accordingly, where a full-time employee is partially incapacitated and, for example, only working 30% of the employee’s normal weekly hours, only 70% of 45 times the employee’s normal weekly hours ‘pool of compensation’ would be used up. The provision is intended to ensure that the period of 45 times the employee’s normal weekly
hours in subsection 19(2) is to be reduced only by the number of hours that the employee is actually absent from work and in receipt of compensation for incapacity.

**Item 15 – Subsection 19(3)**

2.33 This item will replace existing subsection 19(3) with a new provision which clarifies the wording of the subsection, and incorporates amendments consequential to the amendments proposed in item 14.

**Item 16 – Paragraph 19(4)(a)**

2.34 This item will to clarify that the reference to employment in paragraph 19(4)(a) is inclusive of self-employment.

**Item 17 – Subsection 132A(1)**

2.35 This item will replace the current provisions relating to former employees under age 65 who are capable of earning an amount in suitable employment to ensure that the amendments proposed in item 15 relating to a broader interpretation of ‘suitable employment’ are given effect. In particular this provision will make the criteria for application of the subsection that the former employee be under 65, and be capable of engaging in any work.

**Item 18 – Paragraph 132A(2)(a)**
**Item 19 – Paragraph 132A(3)(a)**

2.36 These items will replace the existing paragraphs 132A(2)(a) and 132A(3)(a) to ensure that the amendments proposed in item 15 relating to a broader interpretation of ‘suitable employment’ are given effect.

**Item 20 – Application**

2.37 This item will provide that the amendments in Part 3 have effect only in relation to determinations made on or after the day occurring six months after the day on which Royal Assent is received.

**PART 4 – AMENDMENTS RELATING TO COMPENSATION FOR NON-ECONOMIC LOSS IN RELATION TO CERTAIN INJURIES**

**Item 21 – At the end of section 27**

2.38 This item will add subsection 27(3) at the end of section 27. This additional subsection is intended to clarify the operation of section 27 so that it expressly excludes employees who suffered a permanent impairment before 1 December 1988.

2.39 The rationale for this exclusion is that an employee who suffered a permanent impairment before the commencement date could not receive compensation under section 27 of the SRC Act because such an employee would not have been entitled to receive...
compensation for non-economic loss under the previous legislation. This circumstance was addressed by the transitional provisions at section 124 of the SRC Act which provided, inter alia, that an injured employee was entitled to compensation under the SRC Act if compensation was or would have been payable in respect of that injury under previous legislation (the 1912 Act, the 1930 Act, or the 1971 Act) that was in force when the injury was suffered. The operation of section 124, however, is limited by subsection 124(2) which disentitles an injured employee from receipt of compensation under the SRC Act in respect of an injury suffered by the employee prior to 1 December 1988 if compensation was not payable in respect of that injury under the relevant previous legislation.

2.40 The proposed amendment clarifies that an employee who suffered a permanent impairment prior to the commencement date should not receive compensation under section 27 of the SRC Act because such an employee would not have been entitled to receive compensation for non-economic loss under the previous legislation (the 1971 Act). However an employee is entitled to compensation if an application for compensation for non-economic loss has been made before the date of introduction of the Bill.

**PART 5 – AMENDMENTS RELATING TO PAYMENT OF COMPENSATION TO PERSONS AGED OVER 63**

**Item 22 – Subsection 23(1)**

**Item 23 – Subsection 23(1A)**

2.41 These items will allow all employees covered by the SRC Act who are incapacitated for work as a result of an injury suffered after turning 63 to receive compensation under sections 19-22 of the Act.

2.42 With the commencement of the *Public Service Act 1999* compulsory retirement age in the Australian Public Service (the APS) was abolished. A consequential amendment was made to section 23 of the SRC Act by subregulation 6.1 and Schedule 1 to the *Public Employment (Consequential and Transitional) Regulations 1999*. This amendment inserted subsection 23(1A) into the Act which provides that subsection 23(1) of the SRC Act does not apply to an APS employee who has reached the age of 63 and suffers an injury but provides instead for compensation under subsections 19-22 for a maximum of 104 weeks. An APS employee who has not reached 63 years of age and who suffers an injury remains entitled to compensation under subsections 19-22 until the employee reaches the age of 65.

2.43 The amendments in these items are proposed to extend the coverage of the SRC to non-APS employees who have reached the age of 63 and who are covered by the provisions of the SRC Act.

**Item 24 – Subsection 30(3) (definition of n)**

2.44 This item will adjust the formula for the calculation of a lump sum in the event of a redemption of compensation under section 30. The adjustment will recognise that claimants injured after turning age 63 may be entitled to benefits after age 65.
Item 25 – Application

2.45 This item provides that the amendments in items 22, 23 and 24 apply to persons injured after the commencement of the provision or to persons who have reached 63 and who are receiving incapacity benefits under the SRC Act, or who are eligible to apply for such benefits, when the amendments commence.

PART 6 – AMENDMENTS CONCERNING REHABILITATION PROGRAM PROVIDERS

2.46 Section 34 of the SRC Act currently provides for the approval, by Comcare, of a person as a provider of rehabilitation programs for the purposes of the Act. Approval must be in writing and can be given by Comcare on its own motion or on request by the person seeking approval. In deciding whether approval should be granted, subsection 34(4) requires Comcare to consider the qualifications of the person and their employees, and the effectiveness, availability and cost of the rehabilitation programs provided by the person.

2.47 This part proposes to introduce a number of changes to:

- better define the process for approving new rehabilitation providers,
- charge a fee for the process,
- ensure that an approval can be revoked in certain circumstances; and,
- provide a statutory basis for existing guidelines.

Item 26 – Section 34

2.48 This item will repeal the existing section 34 and substitute two new Divisions within Part 3, Rehabilitation, of the SRC Act, as follows.

New Division 1 – Preliminary

New section 34 – Definitions

2.49 Proposed Division 1 contains proposed section 34 which will define who is a principal of a partnership or company for the purpose of making an application under this part and the date for the renewal of approval for rehabilitation program providers approved under this Part.

New Division 2 – Approved Rehabilitation Program Providers

New section 34A – How this Part applies to partnerships

2.50 Proposed section 34A provides how Part 3 applies to applicants who are partnerships and have applied for approval as a rehabilitation provider, or for renewal of approval.

New section 34B – Persons may seek approval as rehabilitation program providers
2.51 Proposed section 34B will provide that Comcare has the power to approve a person as a rehabilitation program provider for the purposes of the Act.

**New section 34C – Applications for initial approval**

2.52 Section 34C will provide that an application for initial approval must be in writing, identify the applicant (the principal and employees who will participate in the provision of rehabilitation services under the SRC Act, where the applicant is not an individual). It will also provide that the application contain information relating to the criteria in force under section 34D, address the matters which Comcare must consider under proposed section 34E (operational standards), and contain such other information as set out in the prescribed form. Section 34C further prescribes that applications must be accompanied by the prescribed fee for the processing of applications, that Comcare must process any application that meets the requirements of subsection 1 within six months of receipt. Where further information is required pursuant to section 34N the period from the issue of such a notice to the production of that information is not to be included in the calculation of that six-month period.

**New section 34D – Comcare to establish criteria for approval, or renewal of approval, of persons as rehabilitation program providers**

2.53 Section 34D will provide that Comcare must establish written criteria to be satisfied by persons applying for approval as rehabilitation program providers or for renewal of such approval. These criteria must cover a number of aspects including the qualifications of the applicant, financial and matters relating to financial probity of the applicant. Any such criteria determined, or varied, by Comcare must be published in the *Gazette*.

**New section 34E – Comcare to establish operational standards for rehabilitation program providers**

2.54 Section 34E will provide that Comcare must establish written operational standards to be complied with by approved rehabilitation program providers. These standards refer to levels of effectiveness, availability, cost and any other standards that Comcare considers appropriate that must be met in the provision of rehabilitation services as an approved rehabilitation program provider.

**New section 34F – The initial approval decision**

2.55 Section 34F will provide that Comcare must have regard to all information provided in an application, and any further information supplied pursuant to section 34N. Where Comcare is satisfied that the applicant has a capacity to meet the criteria and standards set out under sections 34D and 34E it must approve the applicant as a rehabilitation program provider and inform the applicant of its decision in writing. A refusal to approve must be similarly notified.

**New section 34G – Duration of initial approval given on application**
2.56 Proposed section 34G provides that an approval by Comcare of a person as a rehabilitation program provider comes into force on the day of determination or any later date where specified. Subject to section 34Q, this approval shall remain in force until the next renewal date, if the starting date is more than six months before that date, or the second renewal date following the starting date, if the starting date is less than six months before the next renewal date.

New section 34H – Comcare may also approve persons as rehabilitation program providers on its own initiative

2.70 2.57 Proposed section 34H provides that Comcare may approve a person as rehabilitation provider on its own motion. Such an approval may be given despite the fact the person has not applied for approval, or, if the person has so applied, Comcare has not, at the time of the approval, satisfied itself that the person meets the criteria of approval. A person appointed by Comcare of its own initiative can make an application under section 34B or continue to make an application if approval has not been granted under section 34B. If an application is granted under section 34B than an approval under this item will be revoked. Approvals under this section are limited to the period specified in the instrument of approval.

New section 34J – Person may seek renewal of approval as rehabilitation program providers in certain circumstances

2.58 Proposed section 34J provides that Comcare may renew approval of rehabilitation program providers, but that an application for such a renewal must be made at least six months before the end of an existing approval period. In exceptional circumstances the Chief Executive Officer of Comcare may waive this requirement.

New section 34K – The renewal application

2.59 Proposed section 34K sets out the arrangements for the handling of applications for renewal of approval of a person as a rehabilitation program provider.

New section 34L – The renewal decision

2.60 Proposed section 34L will govern the procedure Comcare must follow in making the renewal decision.

New section 34M – Duration of renewal of approval

2.61 Proposed section 34M will provide that a renewal of approval as a rehabilitation program provider comes into force on the day following the end of the previous approval period, and remains in force until the next renewal day provided that the approval has not been revoked under proposed section 34Q.

New section 34N – Further information may be required of applicants
2.62 Proposed section 34N provides that Comcare may request information in addition to that provided in an application for initial approval or renewal. Where this occurs, then the processing of the application will be suspended until further information is provided by the applicant to Comcare. Failure to provide such information within the period specified in the notice requesting it will mean that the application is taken to be withdrawn.

New section 34P – Initial approval or renewal is subject to conditions

2.63 Proposed section 34P will allow Comcare to impose conditions on an approval or renewal.

New section 34Q – Revocation of approval

2.64 Proposed section 34Q will provide that Comcare may revoke approval if, at any time, the provider has failed to comply with conditions to which the provider is subject, or if it is satisfied that a rehabilitation program provider would not be approved if it applied at that point in time.

New section 34R – Review of decisions

2.65 Proposed section 34R provides that a decision to refuse an application for approval or renewal or revoke an approval, or a decision to impose conditions under proposed paragraph 34P(c), is reviewable by the Administrative Appeals Tribunal.

New section 34S – Approved forms

2.66 Proposed section 34S provides that a reference to an approved form is a reference to a form that approved, by instrument in writing, by Comcare. Subsection 34S(2) provides that this instrument is a disallowable instrument under section 46A of the Acts Interpretation Act 1901.

Item 27 – Before Section 35

2.67 This item will clarify that, following from Divisions 1 and 2 created in item 26, the remainder of Part IV will become Division 3, Rehabilitation Programs.

Item 28 – Saving provision

2.68 Item 28 will provide that approvals made under existing section 34 shall remain in force until the next renewal date in the terms on which the approval was granted as if that section had not been repealed. However, if a person wishes to seek renewal of their approval, they must seek approval in accordance with operational standards under section 34E.

PART 7 – AMENDMENTS RELATING TO COMMON LAW REMEDIES FOR DEPENDANTS OF DECEASED EMPLOYEES
Item 29 – At the end of section 44

2.69 This provision has been necessitated by a reading of existing provisions that a dependant cannot recover damages unless the deceased would have been entitled to maintain an action immediately before his or her death. If the deceased was, immediately before his or her death, barred by section 44 from claiming common law damages from the Commonwealth, then his or her dependants could not maintain an action under the relevant compensation to relatives legislation. However, this item will clarify that section 44 does not act as a bar to dependants of deceased employees suing the Commonwealth. This provision reflects the intention of Parliament at the time that the SRC Act was passed that dependants of deceased employees should be allowed to sue the Commonwealth, a Commonwealth authority, or an employee at common law for the death of an employee.

PART 8 - AMENDMENTS CONCERNING LICENCES TO ENABLE COMMONWEALTH AUTHORITIES AND CERTAIN CORPORATIONS TO ACCEPT LIABILITY FOR, AND DETERMINE, CLAIMS

2.70 These amendments rationalise the existing five classes of licence to provide for one generic licence, with the Minister setting directions for the Safety, Rehabilitation and Compensation Commission (the Commission), and the Commission setting the conditions of licence within the framework of the SRC Act and the Minister’s directions.

Item 30 – Subsection 4(1) (definition of corporation)
Item 31 - Subsection 4(1) (definition of eligible corporation)
Item 32 - Subsection 4(1) (definition of licence)
Item 33 - Subsection 4(1) (definition of licensed corporation)

2.71 Items 30 to 33 are a series of consequential amendments resulting from the proposed amendments in item 49. The amendments will omit “Part VIIIB” or “Part VIA or VIIIB” and insert “Part VIII”.

Item 34 - Subsection 4(1)

2.72 This amendment inserts a definition of licensee. A licensee may be a Commonwealth authority or corporation that is licensed under the proposed new Part VIII.

Item 35 – Subsection 4(1) (paragraphs (a) and (aa) of the definition of relevant authority)

2.73 Item 35 proposes to repeal the current definition of relevant authority in paragraph (aa) and insert a new definition, which will mean that, for an employee of a licensed corporation, the relevant authority will be that corporation. This is a consequential amendment resulting from the proposed amendments in item 52, since there will no longer be different classes of licence. The relevant authority in relation to an employee of a licensed authority is that authority. In all other cases the relevant authority is Comcare.

Item 36 – Subsection 28(4)
2.74 Item 36 proposes to omit “a licensed authority, a licensed corporation” and substitute “a licensee”. This amendment is consequential to item 34 which proposes a new definition of licensee. Accordingly, there will be no requirement to refer to licensed authority or licensed corporation.

Item 37 – Section 41A

2.75 Item 37 proposes to repeal the section and insert a new section. This is a consequential amendment resulting from the proposed amendments in item 49 and reflects the proposed changes to the licensing arrangements. The proposed section refers to “principal officer of a licensee” rather than ‘a licensed corporation’ and clarifies in paragraph (b) that in the case of a Commonwealth authority, this does not include a Commonwealth authority that holds a licence under the proposed Part VIII. The new section also refers to “the Secretary of a Department” rather than ‘to a Department’.

Item 38 – Subsections 60(2) and (3)
Item 39 – Paragraphs 62(2)(c), (d), (e) and (f)
Item 40 – After subsection 62(2)
Item 41 – Paragraphs 64(1)(c) to (h) (inclusive)
Item 42 – Subsection 64(2)
Item 43 – Subsection 67(1A)

2.76 Items 38 to 43 are all consequential amendments resulting from the rationalising of the five classes of licence to form one generic licence.

2.77 Item 38 proposes that the parties to proceedings instituted under Part VIII of the SRC Act are to be the applicant, the claimant (where the claimant is not the applicant), or the body responsible for the reviewable decision. The body responsible for the reviewable decision shall be Comcare, where Comcare made the reviewable decision, or the licensee, where the reviewable decision has been made by or on behalf of a licensee.

2.78 Item 39 proposes to repeal paragraphs 62(2)(c), (d), (e) and (f) and substitute a new paragraph (c). This will allow the Commonwealth authority to seek reconsideration where the determination affects a Commonwealth authority.

2.79 Item 40 clarifies that if a determining authority holds a licence subject to the condition that they must arrange for a reconsideration by another person of a determination made by it, then nothing in subsections (1) or (2) (where a determining authority reconsiders on its own motion) will imply that this condition does not have to be met.

2.80 Item 41 proposes to repeal paragraphs 64(1)(c) to (h) in line with the streamlining of licensing arrangements and inserts two new paragraphs. Paragraph (c) will allow a Commonwealth authority to apply to the Administrative Appeals Tribunal (AAT) for the review of a decision, where the determination affects a Commonwealth authority and paragraph (d) will, if the decision affects a corporation that holds a licence under Part VIII, allow the licensed corporation to make an application to the AAT.
2.81 Item 42 proposes to delete subsection 64(2) of the SRC Act, which is consequential to item 41.

2.82 Item 43 will repeal the subsection and insert a new subsection defining which party is the responsible authority for the purposes of section 67. If the determination affected the Commonwealth or a Commonwealth authority other than a licensed authority, the responsible party is Comcare. If the determination affected a licensee then, in the event that the license authorised acceptance of liability for the claims in respect of which the determination is made, the responsible party is the licensee. Where the determination affects a Commonwealth authority that holds a licence under Part VIII but the licence does not authorise acceptance of liability for the claims in respect of which the determination is made, the responsible authority shall be Comcare.

**Item 44 – Subsection 70B(2)**

2.83 Item 44 is a consequential amendment resulting from the proposed amendments in item 49. The amendment will omit “Part VIIIB” and insert “Part VIII”.

**Item 45 – Subsection 73A(2A)**

2.84 Item 45 is a consequential amendment resulting from the proposed amendments in item 49. The introduction of a single licence will mean there is no need to differentiate between different types of licence holders. The proposed new subsection accordingly refers to a licensed corporation without reference to a particular class.

**Item 46 – Paragraph 89E(1)(d)**

2.85 Item 46 is a consequential amendment resulting from the proposed amendments in item 49. The amendment will omit “licensed authorities” and insert “licensees”.

**Item 47 – Subsection 96A(2) (paragraph (a) of the definition of Estimated Liability)**
**Item 48 – Subsection 96A(2) (paragraph (a) of the definition of Estimated administrative costs)**

2.86 Items 47 and 48 are consequential amendments resulting from the proposed amendments in item 49. The amendments will omit “Part VIIIA” and insert “Part VIII”.

**Item 49 – Parts VIIIA and VIIIB**

2.87 Item 49 will repeal the current Parts VIIIA and VIIIB and insert a new Part VIII which will provide for a single generic class of licence. The Minister will have the power to issue the Commission with directions in relation to licences, including the granting of licences and the terms and conditions of licences.

2.88 The Commission will have the power to grant a licence to a Commonwealth authority or an eligible corporation, for a specified term.
NEW PART VIII – LICENCES TO ENABLE COMMONWEALTH AUTHORITIES AND CERTAIN CORPORATIONS TO ACCEPT LIABILITY FOR, AND DETERMINE, CLAIMS

New Division 1 – Preliminary

New section 98A – Outline of Part

2.89 Proposed section 98A outlines the purpose of this Part. The Part will enable the Commission to grant licences to Commonwealth authorities or eligible corporations.

2.90 Proposed subsection 98A(2) provides that if a Commonwealth authority is granted a licence the SRC Act continues to apply but its application is subject to either or both (depending on the scope of the licence) the acceptance by the authority of the whole or a part of the liability under the Act in respect of some or all of its employees; and the acceptance by the authority of the responsibility for determining claims in respect of some or all of its employees.

2.91 If a licence is granted to an eligible corporation the Act applies to some or all of its employees in a similar way to the way that it applies to Commonwealth employees but subject to the acceptance by the corporation of whole or part of the liability under this Act to pay compensation, and the acceptance by the corporation of the function of determining claims.

2.92 Proposed subsection 98A(4) provides that the application of the Act is subject to any conditions of the licence.

New section 99 – Definitions

2.93 Proposed section 99 is a definitional section and defines certain terms used in the proposed Part VIII. The most significant definitions are:

- Eligible entity, which covers Commonwealth authorities and eligible corporations;
- Manage, which is defined to include not only determination and reconsideration of claims but any related administrative action; and
- Variation, in relation to licence conditions, which is expressed to include the addition of a new condition, an alteration to a condition or the omission of an existing condition.

New section 100 – Minister may declare a corporation eligible to be granted a licence under this Part

2.94 This proposed section allows the Minister to declare certain corporations to be declared eligible to be granted a licence under the new Part. In order to be so declared the Minister must be satisfied that it would be desirable for the Act to apply to the employees of a corporation, that is, one which is, but is about to cease to be, a Commonwealth authority, was previously a Commonwealth authority or is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority. This section remains unchanged from the current section 108C of the SRC Act.
New section 101 – Ministerial directions concerning licences

2.95 Proposed section 101 will provide for the Minister to give directions to the Commission concerning any matter relating to licences granted under this new Part including, but not limited to:

• Criteria for the grant of licences, which may go to limiting the number of licensees overall or of a specific type, particularly if this impacts on the financial viability of the scheme. The criteria may address licences generally or may go to specific types of licence;

• scope and conditions of licence;

• the exercise of the Commission’s power to vary conditions of licence;

• criteria and procedure for the extension, suspension or revocation of such licences or for varying the scope of such licences;

• publication of notices relating to the above; or

• requirements to be observed by the Commission in relation to record keeping and reporting of licences.

2.96 As noted at the end of proposed subsection 101(2), criteria for the grant of a licence may address issues relating not only to the individual licence applied for but to the fact that other licences have been granted, which may or may not be similar to the individual licence being sought, but to the fact that other licences are being sought or may be sought at a later date.

2.97 Proposed subsection 101(2) provides that the directions are to be published in the Commonwealth of Australia Gazette and will not be effective until so published and are disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.

New Division 2 – Powers of the Commission in relation to licences

New section 102 – Application for grant of a licence

2.98 The proposed subsection 102(1) sets out the requirements to be met in applying for a licence. The application must be in writing in the prescribed form, contain such particulars as are contained in the regulations and depending on the licence sought, other information and documents that the regulations require. The application must be lodged with the Commission.

2.99 All applications must be accompanied by an application fee estimated by the Commission to be the cost of considering the application (proposed subsection 102(2)). The application fee must accompany the application if written notice of the amount of the fee is given to the applicant before the application is made otherwise it is payable as soon as practicable after the notice is given. Under proposed subsection 102(4) the applicant may withdraw the application at any time before a decision is made on the application by the Commission and the Commission may refund the fee entirely or reduce the fee and request Comcare to refund the amount of the reduction. The amount of the reduction of the fee will depend on the extent to which the application has been considered by the Commission.
Subsection 102(6) provides that this includes Comcare’s input in assisting the Commission in that consideration.

New section 103 – The Commission’s power to grant licences

2.100 The proposed section 103 provides that on written application by an eligible entity (a Commonwealth authority or an eligible corporation) the Commission has the power to grant a licence for a specified period. In granting a licence the Commission must determine the scope of the licence and licence conditions (if any). The scope of the licence may go to the degree and circumstances in which the licensee may accept liability for compensation, and or the degree and circumstances in which the licensee is authorised to manage claims.

New section 104 – Licence decision

2.101 The proposed section 104 gives the Commission the power to grant or refuse a licence.

2.102 Proposed subsection 104(1) provides that the Commission, having regard to the information contained in an application, plus any further information provided by the applicant, and any other matter that the Commission considers relevant, may by written notice inform the applicant that it has decided to grant a licence.

2.103 Proposed subsection 104(2) provides that in reaching its decision to grant a licence, the Commission must be satisfied that:

- the applicant has sufficient resources to fulfil its responsibilities under the licence; and
- where the licence provides, that the applicant has the capacity to properly manage claims, or if those claims are to be managed by another person on the applicant’s behalf to ensure that those claims will be managed in accordance with standards set by the Commission; and
- that the grant of licence will not be contrary to the interests of those employees who will be covered by the licence.
- that the applicant has the capacity to meet rehabilitation and occupational health and safety standards, as set by the Commission.

2.104 If the Commission does not consider it appropriate to grant a licence, the Commission is required to give the applicant written notice of its decision and include reasons for its decision.

2.105 Proposed subsection 104(4) provides that subsection (3) does not prevent the Commission from granting the applicant, with the written agreement of the applicant, a licence with a different scope to that originally sought by the applicant.

New section 104A – Licence fees
2.106 Proposed section 104A provides that at the commencement of a licence, and each 1 July after that date for which the licence is current, the licensee must pay a fee in respect of that licence. The Commission shall notify the applicant in writing of the amount to be paid.

2.107 In estimating the fee the Commission must have regard to the costs incurred by the Commission and Comcare in meeting their functions under this Act (other than the functions referred to in paragraph 69(ec)), and, where the licensee is covered by the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, the costs incurred by the Commission and Comcare in meeting their functions under that Act.

2.108 Proposed subsection 104A(3) provides that the relevant period for the purposes of calculating the licence fee shall be the remainder of the financial year, for the first licence fee, and every financial year thereafter.

2.109 Subsection 104A(4) provides that the fee is to be paid to Comcare within such period following notification as is determined by Comcare.

*New section 105 – The Commission may vary the scope of a licence or extend its term*

2.110 The proposed section allows the Commission, on written application of the licensee, to vary the scope or extend the term of a licence which is in force. A licensee may apply for a new licence, irrespective of whether the original licence has been extended or not, or has expired or is about to expire.

*New section 106 – Suspension or revocation of licences at the instance of the Commission*

2.111 Proposed subsection 106(1) provides for the Commission to suspend or revoke a licence, if it considers it appropriate. However, before taking suspension or revocation action, the Commission must follow such preliminary procedures that are specified in the Minister’s directions.

*New section 107 – Revocation of licence at request of licensee*

2.112 Proposed section 107 provides that the Commission may revoke a licence at the request of the licensee.

*New section 107A – Effect of suspension or revocation*

2.113 Proposed section 107A provides for regulations to be made that will set out the consequences of suspension or revocation of a licence.

2.114 It is expected that the regulations will deal with such matters as, the former licensee’s liability to pay compensation for its employees injured before the date of suspension or revocation, and issues relating to the making of determinations.

*New Division 3 – Authorisation to accept liability in respect of certain claims*
New section 108 – Licence can authorise licensee to accept liability

2.115 Proposed subsection 108(1) provides that a licensee may be authorised to accept liability to pay compensation in respect of a particular injury, loss, damage or death for some or all of its employees.

2.116 Proposed subsection 108(2) provides that the scope of the licence regarding liability to pay compensation, may be determined by the Commission.

2.117 Proposed subsection 108(3) provides that the scope of a licence may include provision for the licensee to accept liability to pay benefits for claims arising prior to the licence coming into force.

New section 108A – The consequence of a licensee’s authorisation to accept liability

2.118 Proposed subsection 108A(1) provides that if the licensee is authorised to accept liability to pay compensation in respect of a particular injury, loss or damage suffered by, or in respect of the death of, some or all its employees, and that event occurs, then, the licensee is liable to pay compensation in respect of that event and Comcare is not so liable.

2.119 Subsection 108A(2) provides that subsection (1) does not affect Comcare’s liability to pay compensation, to the extent that the liability is not a liability that the licensee is authorised to accept.

2.120 Under proposed subsection 108A(3), the liability upon a licensee to make payments does not make it liable to have proceedings under the SRC Act brought against it. But where relevant proceedings are brought against Comcare, Comcare must inform the licensee of the fact so that the latter may, if it wishes, apply to become a party to the proceedings (proposed subsections 108C(4) and (5). As noted at the end of proposed subsection 108C(3), if licensees are authorised to manage claims, proceedings may be brought against them in respect of the management of those claims (proposed subsection 108C(7)).

2.121 The result of any proceedings is binding on both Comcare and the licensee, whether or not the licensee is a party to the proceedings (proposed subsection 108A(6)).

2.122 Proposed subsection 108A(7) provides that State law relating to workers compensation is not to apply in respect of death, injury, loss or damage occurring after the licence came into force to a licensee who is authorised to accept liability to pay compensation under the SRC Act. However, liability of a corporation under State or Territory law is unaffected in relation to injury, loss or death occurring before the licence came into effect.

New Division 4 – Authorisation to manage claims

New section 108B – Licence can authorise licensee to manage claims

2.123 Proposed subsection 108B(1) provides that a licence may authorise a licensee to manage some or all claims made by employees of the licensee. Alternatively, the licence may authorise a specified person to perform the function on the licensee’s behalf. The
specified person would normally be an entity with which the licensee has entered into a contractual arrangement to provide a claims management service.

2.124 The Commission may determine the scope of the licence, so far as it authorises management by the licensee of claims made by the licensee’s employees under the Act (proposed subsection 108B(2)).

2.125 Proposed subsection 108B(3) provides that a licensee may enter into a contract with a third party for that party to provide a claims management service on the licensee’s behalf. However, the contract for such a service does not come into force unless and until the Commission has varied the licence to note the identity of the claims management service provider. This allows the Commission to oversee who may become a contract claims service provider (proposed subsection 108B(4)).

2.126 Proposed subsection 108B(5) provides that the scope of a licence may include provision for the licensee to manage claims that were made before the licence came into force, irrespective of whether Comcare has commenced management of those claims.

2.127 Proposed subsection 108B(6) relates to the circumstance where a corporation has obtained a licence authorising the management of claims in respect of some of its employees. This means that the corporation will also be authorised to accept liability on behalf of those employees covered by the licence. The corporation’s responsibility to accept liability in relation to those employees not covered by the licence is not affected just because it has a claims management licence in respect of other employees covered by the licence.

New section 108C – The consequences of a licensee’s authorisation to manage claims

2.128 Proposed subsection 108C(1) provides that licensees must determine claims in accordance with the scope of the licence.

2.129 If the licence authorises the licensee to manage claims made before the licence came into force, a determination made by Comcare and in force immediately before the commencement of the licence, is to be taken, after that time to have been made by the licensee. Further, any other thing done by Comcare and in force immediately before the licence comes into force, is taken to have been done by the licensee.

2.130 Proposed subsection 108C(3) provides that in respect of any claims that a licensee is authorised to manage any notice or claim given or made under Part V of the SRC Act after the licence comes into force is to be given or made to the licensee. Further, any notice given or claim made under Part V of the SRC Act and in force immediately before the licence comes into force, continues in force as if it had been given to the licensee.

2.131 Subsections (4) to (9) of section 108C deal with matters relating to any proceedings which may have been or may be commenced with respect to a determination made by Comcare or a licensee.

2.132 Under proposed subsection 108C(4), proceedings to which Comcare was a party, pending but not completed on the commencement of a licence, may be continued after that commencement and if they are so continued, the licensee is taken to replace Comcare as a
party to the proceedings. Comcare, however, must inform the licensee (proposed subsection 108C(5)) of any determination made or other thing done by Comcare, notice or claim given or made under Part V to Comcare, or proceedings to which Comcare is a party where the licensee replaces Comcare after the licence comes into force.

2.133 Proposed subsection 108C(6) provides that where, pursuant to proposed subsection 108C(4), the licensee replaces Comcare as a party to the proceedings, then the court or tribunal before which proceedings have been brought must, on the application of Comcare, join Comcare as a party to the proceedings.

2.134 Proposed subsection 108C(7) provides that where a licensee is authorised to manage claims, any proceedings, including proceedings under Part VI of the SRC Act, must be brought against the licensee, in relation to a determination made or any thing done, or taken to have been made or done, by the licensee.

2.135 Proposed subsection 108C(8) provides that if proceedings are brought against the licensee in accordance with subsection (7), the licensee must inform Comcare as soon as practicable that proceedings have been brought against it. Comcare may then apply to become a party to the proceedings. The subsection does not require that Comcare have any liability in respect to the particular proceedings, although it may have, but allows Comcare in its role as ‘regulator’ to put its own submission to the court or tribunal.

2.136 Comcare becomes a party to the proceedings by filing a notice of its wish to do so in the registry of the court or tribunal concerned (proposed subsection 108C(9)). A copy of that notice must be served on the licensee and on each other party to the proceedings.

2.137 Proposed subsection 108C(10) provides that a decision in proceedings referred to in subsections (4) or (7) is binding on both the licensee and Comcare, whether or not Comcare is a party to the proceedings.

New Division 5 – Conditions of a licence

Proposed section 108D – The Commission may grant licence on conditions

2.138 Proposed subsection 108D(1) provides for the Commission to grant a licence subject to any conditions it considers are necessary to achieve the objects of the SRC Act.

The proposed subsection then sets out a number of conditions that the Commission may set. These conditions may include:

- a condition that the licensee, and any person acting on its behalf, will comply with the requirements of the Act and relevant directions given by the Commission;

- a condition that the licensee will pay all relevant fees;

- a condition that the licensee will maintain sufficient funds to enable the due discharge of its liability to pay compensation;
• a condition that the licensee will obtain bank or other guarantees for the due discharge of its liability to pay compensation;

• a condition that the licensee will comply with all applicable laws of the Commonwealth, States and Territories relating to safety, health and rehabilitation;

• a condition that, in relevant circumstances, the licensee will not cause or permit to be made to a court or tribunal a submission that Comcare or the Commission has requested it not to make;

• conditions concerning the performance of functions by persons other than the licensee, which may include conditions relating to the provision of claims management by an external provider, and including conditions concerning the reconsideration of determinations made by the licensee; and

• conditions concerning the provision of notification of information.

2.139 Proposed subsection 108D(2) provides for the Commission to vary the conditions of licence while it is in force. The terms of the variation must be given in writing to the licensee and cannot be earlier than the date the licensee is advised of the variation.

New Division 6 – Miscellaneous

New section 108E – Functions of licensees

2.140 Proposed section 108E sets out the functions of licensees under the SRC Act, subject to any limits set by the conditions of licence. These functions are in addition to any functions cast on them by other legislation, or the relevant constitution of any corporation.

2.141 For licensees required to pay compensation, this is to be done accurately and quickly. For licensees required to manage claims, determinations are to be made accurately and quickly and they are to take all necessary action in respect to the management of those claims. Licensees are to maintain contact with the Commission and Comcare to ensure that, as far as practicable, there is equity of outcomes resulting from the administrative practices and procedures of Comcare and the licensees. This is a more outcomes focussed approach, so that there is no requirement that the procedures be similar, so long as the outcomes are equitable.

2.142 In addition, licensees are required to meet any obligation that is incidental to their liability to pay compensation and determine claims and which Comcare would be required to meet, if Comcare were responsible for that function. Licensees are required to comply with the conditions of licence.

New section 108F – Powers of licensee
2.143 A licensee is given the power to do all things necessary or convenient done for the performance of its functions.

New section 108G – Date of effect of certain notices under this Part

2.144 This proposed section provides that any notice given to a person in relation to the grant, extension, suspension or revocation of a licence may have a prospective date, but the date of effect cannot be earlier than the date the notice is given to the person.

Item 50 – Transitional provision

2.145 Item 50 sets out the transitional provisions arising from the proposed repeal of Parts VIIIA and VIIIB of the SRC Act (item 49).

2.146 Subitem (1) provides that if immediately before the commencement of the new Part VIII, a Commonwealth authority or corporation held a licence under Part VIIIA or VIIIB of the SRC Act, the provisions of the SRC Act continue to apply in relation to that Commonwealth authority or corporation in their capacity as licence holders under Part VIIIA or VIIIB, as the case requires, as if the new Part VIII had not been enacted. This allows a current licence holder to continue to hold its licence under the present conditions.

2.147 Notwithstanding the above, a current licence holder may still apply to have a new licence under the proposed Part VIII.

2.148 Subitem (3) provides that if a current licence holder obtains a new licence under the proposed Part VIII, the Commission is to decide how to deal with any ongoing claims that arose while the licence holder held a licence under Part VIIIA or Part VIIIB, as applicable. Subject to the arrangements provided for by the Commission, the licence granted under Part VIIIA or Part VIIIB is then of no further effect.

Item 51 – Paragraph 114A(1)(a)

2.149 This is a consequential amendment resulting from the changes to the licensing arrangements in the new Part VIII. The removal of different classes of licence means that the requirement for a licensed Commonwealth authority to advise Comcare of the retirement of its employees will be set in the licence conditions. It is expected that only those Commonwealth authorities whose licence conditions restrict them to claims management, will be required to advise Comcare of the retirement of their employees.

Item 52 – Section 121

2.150 This item would provide that notices in writing under section 100 are disallowable instruments for the purposes of s 46A of the Acts Interpretation Act 1946. This, and other changes in this item are consequential to the provisions outlined in item 49.

PART 9 – AMENDMENTS CONCERNING COMPENSATION PAYABLE FOR HEARING LOSS
Schedule 2 - Amendment of the Safety, Rehabilitation and Compensation Act 1988

Item 53 – Subsection 24(7)

2.151 This item repeals existing subsection 24(7) and introduces new subsections 24(7) and 24(7A). New subsection 24(7) provides that where the employee has a permanent impairment other than a hearing loss and Comcare determines that the degree of permanent impairment is less than 10% then no amount of compensation is payable. This section introduces a new exception of hearing loss. Further exceptions listed in subsection 24(8) remain unchanged.

2.152 New subsection 24(7A) will provide that where the employee has a permanent impairment that is a hearing loss and Comcare determines that the binaural hearing loss suffered by the employee is less than 10% then no amount of compensation is payable. Binaural hearing loss refers to the combined hearing loss in both ears. The previous threshold in accordance with the approved guide of 20% binaural hearing loss (10% whole person) before compensation was payable has been reduced to 10% binaural hearing loss to increase access to compensation for hearing loss.

Item 54 – Subsection 25(4)

2.153 This item provides an exception in subsection 25(4) in respect of hearing loss so that further compensation is payable to employees who have suffered a subsequent increase in their hearing loss even though the increase is less than 10% subject to the threshold stipulated in subsection 25(5).

Item 55 – At the end of section 25

2.154 This item adds a new subsection 25(5) clarifying the exception in subsection 25(4) providing that where Comcare has made a final assessment of the degree of permanent impairment constituted by a hearing loss, no further amount of compensation shall be payable in respect of a subsequent increase in hearing loss unless that such an increase in the degree of binaural hearing loss is 5% or more.

Item 56 – Application

2.155 This item provides that the new lower threshold for hearing loss is only to apply to claimants in respect of permanent impairment resulting from an injury suffered on or after Royal Assent.

PART 10 – AMENDMENTS RELATING TO PREMIUMS, SPECIAL PREMIUMS AND REGULATORY CONTRIBUTIONS

2.156 This Part will amend provisions relating to premiums and regulatory contributions by:

- enabling Comcare to collect premiums to fund common law claims which are permitted under the Act, and to manage such claims;
- amending the procedures for determining premiums;
- rationalising scheme funding under the SRC Act and the Occupational Health and Safety (Commonwealth Employment) Act 1991;
- simplifying existing appropriation and revenue arrangements for Comcare to ensure consistency with the Commonwealth Authorities and Companies Act 1997 and enable Comcare to receive premiums, licence fees and occupational health and safety contributions into its own bank account.

**Item 57 – Subsection 4(1)**

2.157 This item inserts a definition of *action for non-economic loss* as meaning any action to recover an amount for non-economic loss taken by an employee against an employer or another employee that follows an election under subsection 45(1). This item is intended to clarify that action for non-economic loss is not restricted to formal institution of proceedings but can include processes like settlement negotiations and consultation.

**Item 58 – Subsection 4(1) (definition of *premium*)**

2.158 This item replaces the existing definition of *premium* with a new definition referring to an amount paid pursuant to Division 4A of Part VII of the Act in a given financial year but excluding a special premium paid under this Act. The term would include any contribution required under section 98 of the Commonwealth Employees (Rehabilitation and Compensation) Act 1988 as formerly in force.

**Item 59 – Subsection 4(1)**

2.159 This item inserts a definition of *special premium* which relates to a payment resulting from a determination under section 97AA. Special premiums are only payable in respect of the financial years starting on 1 July 1999 and 1 July 2000.

**Item 60 – At the end of section 45**

2.160 This item adds an extra subsection (5) to section 45 which provides that an employee’s election to institute an action or proceeding against the Commonwealth does not prevent the employee from instituting any other action which constitutes an action for non-economic loss. This item clarifies that once an employee has made an election under section 45 they are not confined to taking formal proceedings against the Commonwealth. An employee who has made such an election can take other action (eg settlement negotiated before or in place of formal proceedings).

**Item 61 – Section 46**

2.161 This item replaces the words after paragraph (b) with new provisions which refer to claims instead of proceedings, and introduce penalty units. The purpose of changing the references to ‘proceedings’ to ‘claims’ is to allow the negotiation of common law matters where a claim for damages has been made, whether or not formal proceedings have been instituted.
Item 62 – Section 47

2.162 This item replaces the existing section 47 with a new provision to the same effect which refers to claims instead of proceedings (for the reasons noted above in relation to item 61), and introduces penalty units.

New Section 47 – Notice of common law claims against Commonwealth

2.163 This section would require an employee or dependant to whom compensation under the SRC Act is payable in respect of death or injury, and who makes a claim for damages in respect of death or injury against the Commonwealth, a Commonwealth authority, a licensed corporation or another employee, must notify Comcare in writing of the claim as soon as practicable but no later than seven days after becoming aware of the claim.

Item 63 – Subsections 48(4A) and (5)

2.164 This item repeals and substitutes so as to replace references to ‘proceedings’ with references to ‘claims’ (for the reasons noted above in relation to item 61) in subsections 48(4A) and 48(5).

Item 64 – Subsection 50(1)

2.165 This item repeals and substitutes so as to replace references to ‘proceedings’ with references to ‘claims’ (for the reasons noted above in relation to item 61) in subsection 50(1).

Item 65 – Subsections 50(2), (3), (4) and (5)

2.166 This item repeals and substitutes so as to replace references to ‘proceedings’ with references to ‘claims’ (for the reasons noted above in relation to item 61) in subsections 50(2), (3), (4) and (5). This item also makes changes consequential to amendments to allow the negotiation of common law matters where a claim for damages has been made, whether or not formal proceedings have been instituted. The item introduces a provision requiring an employee or dependant to sign, where required by Comcare, any document relevant to a claim made or taken over by Comcare. If the employee or dependant does not sign where so required and the matter is not before a court or tribunal at the time of the failure to sign, then the Federal Court may direct that the document be signed on his or her behalf by a person appointed by Comcare. Where the claim is before a court or tribunal at the time of the failure to sign, however, then the court or tribunal may similarly direct that the document be signed on his or her behalf by a person appointed by Comcare.

Item 66 – Subsection 50(7)

2.167 This item replaces references to proceedings with references to claims in subsection 50(7).

Item 67 – Subsections 51(1) and (2)
2.168 This item makes changes which are consequential to those outlined in respect of item 61.

Item 68 – At the end of Part IV

2.169 This item adds a new section 52A setting out Comcare’s rights and obligations in respect of certain actions for non-economic loss.

New Section 52A – Comcare’s rights and obligation in respect of certain action for non-economic loss

2.170 This provision applies where an employer has paid an amount to cover liability for actions for non-economic loss brought by its employees and where an employee takes action for non-economic loss against another person. Comcare may take over the conduct of the action on behalf of that other person and, where the action is before the court and Comcare determines it appropriate, then Comcare may join the other person as a party to the action. This section covers any action which has already been commenced at the time of the commencement of this provision.

2.171 The new section reflects amendments to allow the negotiation of common law matters where a claim for damages has been made, whether or not formal proceedings have been instituted. The new section contains a provision requiring the other person to comply with any reasonable requirement of Comcare including to sign, where required by Comcare, any document relevant to the conduct or settlement of the action. If the employee or dependant does not sign where so required and the action is not before a court or tribunal at the time of the failure to sign, then the Federal Court may direct that the document be signed on his or her behalf by a person appointed by Comcare. Where the action is before a court or tribunal at the time of the failure to sign, however, then the court or tribunal may similarly direct that the document be signed on his or her behalf by a person appointed by Comcare.

2.172 The new section specifies that where damages are awarded against the party claimed against or payment by that party results out of a settlement, then, whether or not the conduct of the action was taken over by Comcare, then Comcare must pay any amount to be paid by the party claimed against. Any such payment shall be in satisfaction of the liability of the party claimed against. Where, in an action which has been taken over by Comcare, costs would be payable to the party claimed against, then that amount is payable to Comcare.

Item 69 – Paragraph 69(ea)

2.173 This item introduces additional paragraphs to section 69 detailing a number of Comcare functions in addition to other functions of Comcare under the Act. These are:

- To manage actions for non-economic loss;
- To determine and collect premiums and special premiums payable by Departments and Commonwealth authorities;
- To apply premiums and special premiums, and any interest earned, to:
  - meeting Comcare liability for injuries suffered by employees of such Departments and authorities;
Schedule 2 - Amendment of the Safety, Rehabilitation and Compensation Act 1988

- payments in relation to claims for non-economic loss; and
- costs incurred by Comcare in managing such claims for compensation and conducting such actions for non-economic loss and claims against third parties.

- To determine, under section @97C, the amount of regulatory contributions payable by Departments and Commonwealth authorities, and to collect such contributions;
- To collect all application and licence fees payable under Part VIII;
- To apply regulatory fees, and application and licence fees, and any interest earned, to:
  - The cost incurred by Comcare and the Commission in carrying out their statutory functions under the SRC Act, other than those set out in paragraph 69(ec). This exclusion is to ensure that Comcare does not use the regulatory contribution and licence fees to meet its liabilities in relation compensation and managing claims;
  - The costs associated with Comcare and the Commission carrying out their functions under the Occupational Health and Safety (Commonwealth Employment) Act 1991.

Item 70 – Section 90A

2.174 This item repeals section 90A to reflect item 72 which provides that Comcare shall retain such funds as are attributable to premiums, special premiums and interest earned.

Item 71 – Transitional Provision

2.175 This item is a transitional provision to ensure that section 90A continues as in force prior to 1 July 2001 in respect of any premium in respect of a financial year starting before that date.

Item 72 – Section 90C

2.176 This item repeals and substitutes section 90C so as to clarify that money required by Comcare to meet its liability in relation to injuries suffered on or after 1 July 2001, and any liability in respect of injuries occurring before that date but which was not discharged at that date, is to be sourced from Comcare-retained funds. These funds shall also be used to pay damages or other payments in relation to an action for non-economic loss, payments for which have not been made before 1 July 2001. The funds shall further be used to meet any administrative expenses associated with the performance of Comcare functions in relation to claims for injury, loss or damage suffered by, or for the death of, an employee on or after 1 July 1989.

2.177 This item also provides that if Comcare-retained funds are not sufficient to make a particular payment as set out above, then such payment will be made to Comcare by the Commonwealth as is necessary to enable such a payment to be made. Such a payment, however should not be made if it would exceed the amount of premiums paid to the Commonwealth on or after 1 July 1989 and before 1 July 2001 plus an amount of notional interest, as determined by the Minister responsible for the administration of the Commonwealth Authorities and Companies Act 1997, less amounts paid, before the relevant payment, to the previous Commission or Comcare for the performance of their functions under the Act.
2.178 For amounts to be determined after 1 July 2001, this item provides that the above variables (ie premiums paid to the Commonwealth or transferred within the Consolidated Revenue Fund (notionally paid) between 1 July 1989 and 1 July 2001, notional interest accruing during that period, and previous payments made before that time) may be calculated by the Minister responsible for the administration of the Commonwealth Authorities and Companies Act 1997.

**Item 73 – Saving provisions**

2.179 This item is a transitional provision to ensure that section 90C continues as in force prior to 1 July 2001 to enable Comcare to discharge any liabilities or meet administrative expenses incurred before that date.

**Item 74 – Paragraph 91(3)(a)**

2.180 This item would clarify that the money of Comcare shall be applied to the performance of its functions and powers under this Act and the Occupational Health and Safety (Commonwealth Employment) Act 1991.

**Item 75 – Division 4A of Part VII**

2.181 This item would repeal existing Division 4A of Part VII of the Act and replace it with a new Division 4A. It is proposed to make Comcare, rather than the Commission, responsible for calculating the premium and to undertake the initial review (where sought). The Commission will issue guidelines to be used by Comcare to calculate premiums, and the Commission, rather than the Minister, will be the final avenue of appeal.

2.182 The word “estimates” will no longer be used in relation to premiums. Instead, the Act will refer to “determinations” of premiums.

*New Division 4A – Premiums and regulatory contributions*

**New section 97 – Determination of premiums**

2.183 This item would provide that Comcare must make a determination of the amount of premium which is payable by a Department or Commonwealth authority in a financial year.

**New section 97A – Matters for consideration in determination of premium**

2.184 This item would also introduce a new provision specifying that in addition to taking into account the prescribed amount and the penalty amount or bonus amount when determining the amount of the premium of a Department or Commonwealth authority for a financial year, Comcare must have regard to any guidelines issued by the Commission in relation to the determination of premiums.
2.185 New section 97A(2) would be equivalent to existing subsection 96A(2) replacing a reference to the Commission with a reference to Comcare in the definition of *bonus amount*.

2.186 The item would effectively delete paragraphs (c) and (d) of the definition of *bonus amount* in current subsection 96A(2) of the SRC Act. These paragraphs currently provide that in determining the amount (if any) to be deducted from the prescribed amount payable by a Department or authority, regard shall be had to the nature and extent of any rehabilitation programs, and also any occupational health and safety programs provided by the Department or authority for its employees.

2.187 As amended the bonus amount would be determined by regard to the number of claims made by, or in relation to, employees of the Department or authority in the previous financial year, and the amount of compensation paid to, or in relation to, such employees under the Act.

2.188 This item would replace the reference to the Commission with a reference to Comcare in the definition of *penalty amount* in subsection 96A(2).

2.189 Paragraphs (c) and (d) of the definition of *penalty amount* in subsection 96A(2) of the SRC Act currently provide that in determining the amount (if any) to be added to the premium payable by a Department or authority, regard shall be had to the nature and extent of any rehabilitation programs, and also any occupational health and safety programs provided by the Department or authority for its employees.

2.190 This item proposes to delete paragraphs (c) and (d). As amended the penalty amount would be determined by regard to the number of claims made by, or in relation to, employees of the Department or authority in the previous financial year, and the amount of compensation paid to, or in relation to, such employees under the Act.

2.191 This item further proposes to replace the references to the Commission with references to Comcare in the definition of *estimated liability*. It will also delete a reference to the Minister who directed how liability was determined by the Commission in the definition of *estimated liability component*. The ministerial direction will be replaced by guidelines prepared by the Commission to which Comcare must have regard when determining premiums. The item will replace a previous reference to *estimated administrative costs* with *estimated management component*.

2.192 The new definition of estimated management component in respect of a financial year means the estimated cost to Comcare of all claim management reasonably attributed to a Department or authority. This includes the cost to Comcare of taking over conduct of actions for non-economic loss. The estimated cost to Comcare of claims management is attributed to a particular Department or Authority by Comcare estimating the injuries that will be suffered during a financial year by employees of a Department or Authority (which does not hold a licence under the Act). Where an authority does not hold such a licence Comcare will attribute to it an estimated cost of managing claims with regard to the number of injuries that Comcare estimates will be suffered during that financial year by employees of the authority.
in respect of whom the authority is not authorised to manage claims (which will be managed by Comcare).

**New section 97B – Determination of special premiums for non-economic loss in respect of injuries suffered after 30 June 1999 and before 1 July 2001**

2.193 This provides that Comcare must determine a special premium to be paid by each Department and Commonwealth authority that did not make arrangements for insurance cover in respect of possible liability under actions for non-economic loss arising from injuries suffered from the financial year starting 1 July 1999 or 1 July 2000. The provision specifies that the Commission may issue written guidelines to the CEO of Comcare in relation to the determination of the special premium. Such guidelines must not conflict with directions issued under section 73 of the Act, and will be invalid to the event of the inconsistency. The Division’s provisions relating to notification of the determination of the premium, date of effect of determination of premium and provision for payment of the premium, procedures for review of the premium and provisions for refund or variation of any part of the premium and refund of any premium excess shall apply to the special premium as they do to premiums paid in respect of the financial year starting 1 July 2001 as though the special premium were a premium determined under section 97 and the financial year to which the special premium relates were the financial year starting on that date. The special premium must also be treated by Comcare as if it were a premium in respect of the financial year commencing 1 July 2001, and may be used for payment in settlement of an action for non-economic loss.

**New section 97C – Estimate of premium for certain Commonwealth authorities**

2.194 Section 128A of the Act prescribes Commonwealth authorities who are liable to pay (which otherwise would have been payable by Comcare if the authorities were not so prescribed) an amount in respect of any injury loss or damage suffered by its employees before 1 July 1989. This item provides that Comcare in determining a premium for such an authority for a financial year must disregard any claim in relation to such injury, loss or damage or any amount paid out by the Authority under section 128A in respect of such injury, loss or damage.

**New section 97D – Regulatory contributions**

2.195 Section 97D provides that Comcare must set an amount to be paid by Departments and Commonwealth Authorities (other than an authority that is a licence holder) as a regulatory contribution. The regulatory contribution shall consist of the estimated costs incurred by the Commission and Comcare in carrying out their functions under the Act that Comcare determines in accordance with guidelines under section 97E are referrable to that agency or authority. It also includes the estimated cost of the Commission and Comcare in carrying out their functions under the OHS(CE) Act which is to be determined in accordance with guidelines under section 97E.

**New section 97E – Commission may issue guidelines for determination of premiums and regulatory contributions**
2.196 This provision provides that the Commission may prepare and issue written guidelines to the CEO of Comcare in relation to the determination by Comcare of premiums and the regulatory contributions to be paid by Departments and Commonwealth authorities in respect of a financial year. The guidelines in relation to regulating contributions do not apply to Commonwealth authorities which hold a licence. Such guidelines are not to be inconsistent with section 73 of the Act, and are invalid to the extent of any inconsistency.

New section 97F – Information to be given to Comcare

2.197 This item introduces section 97F which requires that the Secretary of each Department and principal officer of each Commonwealth authority must provide a written estimate of salary and wages to be paid to their employees during the next financial year. This would enable Comcare to determine the amount of premium or regulatory contribution payable by the Department or authority.

New section 97G – Notice of determinations

New section 97H – Payment of the premium or regulatory contribution

2.198 This item would also insert new sections 97G – Notice of determinations, and 97H – Payment of the premium or regulatory contribution, in the SRC Act.

2.199 New section 97G requires Comcare to give a copy of a determination made in relation to a Department or a Commonwealth authority to the relevant Secretary or principal officer.

2.200 New section 97H provides that a determination takes effect 14 days after the day on which the Department or authority received a copy of the determination.

2.201 New subsection 97H(2) empowers the Commission to give directions in writing to the Secretary of a Department or principal officer of a Commonwealth authority relating to the payment of the Department’s or the authority’s premium or regulatory contribution. Subsection 97H(3) places an obligation on the Secretary of a Department or principal officer of an authority to comply with any directions given by the Commission. Subsection 97H(4) empowers the Commission to vary a direction given to the Secretary of a Department or the principal officer of a Commonwealth authority on written request from the Secretary or the principal officer.

New section 97J – Review by Comcare of determination of premium or regulatory contribution

2.202 This item introduces a new section 97J which proposes to repeal section 96D. Section 97J would provide that the Secretary to a Department, or the principal officer of a Commonwealth authority, to which a determination relates may, by written notice, ask Comcare to review the determination.

2.203 The notice must be given to Comcare within 14 days after the Department or authority received a copy of the determination, and must set out the grounds of objection.
2.204 Comcare must review the determination as soon as is practicable after receiving the notice, and decide either to confirm the determination or vary the determination in such manner as it thinks fit and confirm it as so varied.

2.205 Comcare must give written notice to the Secretary to the Department or the principal officer of the Commonwealth authority of the result of the review of the determination.

2.206 To avoid doubt, new subsection 97J(5) provides that an objection by a Department or Commonwealth authority does not remove its obligation to pay its premium or regulatory contribution in accordance with any directions given by the Commission under section 97H.

**New section 97K – Further review by Commission of outcome of Comcare’s review**

2.207 This item also introduces a new section 97K which differs from the corresponding provisions of existing section 96F of the SRC Act. Section 96F currently provides for review by the Minister. Section 97K would provide that if a Department or authority still objects to its determination following a review by Comcare under section 97J of the Act, then the Department or authority may seek a further review by the Commission.

2.208 New subsection 97K(3) provides that as soon as practicable after receiving notice of the objection, the Commission must review the determination and decide either to confirm the determination or to vary the determination and confirm it as so varied.

2.209 New subsection 97K(4) provides that the Commission must give written notice of the result of the review to the Secretary to the Department or the principal officer of the authority.

2.210 Section 96FA currently provides for confirmation of premium estimates. This is no longer necessary as proposed new section 97H provides that a determination takes effect 14 days after the day on which the Department or authority received a copy of the determination.

**New section 97L – Refund of premium or regulatory contributions**

2.211 Proposed new section 97L provides that if an amount equal to the premium of a Department or authority has been paid to Comcare and the amount of the premium or regulatory contribution is later reduced as a result of a review under section 97J or 97K, then the Department or authority is entitled to the difference between the amount so paid and the reduced amount and this is payable by Comcare.

2.212 Proposed new subsection 97L(3) provides for interest to be paid on the difference, at such rate as is specified by the Minister by notice in the Gazette, in respect of each day of the overpayment period. However, interest would not be payable if it is less than $100.

2.213 Proposed new subsection 97L(4) defines overpayment period as the period beginning on the day on which the premium or regulatory contribution was paid under section 97H and ending on the day on which the difference was paid.
New section 97M – Variation of determination of premium or regulatory contribution

2.214 New section 97M describes the circumstances in which Comcare may vary a determination or regulatory contribution. Section 97M(2) requires Comcare to send a copy of the variation with a statement of reasons for the variation to the Secretary of the Department or the principal officer of the Commonwealth authority. The review rights in relation to a determination apply to a variation of a determination.

2.215 If a variation results in a reduction of an amount of premium or regulatory contribution payable by a Department or authority then the Department or authority is entitled to the difference which is payable by Comcare.

2.216 If Comcare erroneously charges a Department or Commonwealth authority in excess of the premium or regulatory contribution it should have charged then the Comcare must repay the mount of the excess with interest. Interest will be specified by the Minister by notice in the Gazette but is not payable if the excess is less than $100.

New section 97N – Repayment of premium excess etc.

2.217 New section 97N provides that where Comcare is required to make payments under sections 97L or 97M then such payments should be made from Comcare-retained funds within the meaning of subsection 90C(5). Where Comcare-retained funds are not sufficient to make a particular payment then such an amount as is necessary to make that payment shall be payable to Comcare out of the Consolidated Revenue Fund.

New section 97P – Penalty for late payment of premium or regulatory contribution

2.218 New section 97P provides that where a premium or regulatory contribution is payable by a Department or Commonwealth authority and that payment is not made by the later of 31 July in the financial year to which the premium or regulatory contribution relates or within 30 days of the issue of a notice of the determination of the premium or regulatory contribution, then interest is payable at a rate specified by the Minister by notice in the Gazette, in respect of each day on which the amount is not paid. However, interest would not be payable if it is less than $100.

Item 76 – Saving provision – Continuance of Division 4A in respect of certain premiums

2.219 This item is a transitional provision to ensure that Division 4A of Part VII of the Safety, Rehabilitation and Compensation Act 1988 continues as in force prior to 1 July 2001 in respect of any premiums payable in respect of a financial year starting before that date.

Item 77 – Saving provision – Review by Commission unaffected by repeal of Division 4A

2.220 This item specifies, without limiting the application of item 76, that where the Commission, before 1 July 2001, had commenced but not completed a review under section
96D of the SRC Act in respect of a financial year starting before 1 July 2001, then the Commission may complete that review. The item further provides that where such a review had not been commenced before that date then it should undertake that review. These reviews are to proceed as though the repeal of Division 4A of Part VII of that Act had not occurred.

**Item 78 – Saving provision – Review by Minister unaffected by repeal of Division 4A**

2.221 This item specifies that where the Minister had not completed or not commenced a review of the estimate of a premium determined payable before 1 July 2001, or an estimate varied by the Commission under section 96D of the SRC Act, then the Minister may complete or undertake that review as though the repeal of Division 4A of Part VII of that Act had not occurred.

**Item 79 – Saving provision – Notices, requests and directions continue to have effect**

2.222 This item provides that any notice, request or direction related to Division 4A of Part VII of the SRC Act as in force before 1 July 2001 continues to have effect in accordance with item 76 of this schedule.

**Item 80 – Validation of certain acts or things done in relation to actions for non-economic loss**

2.223 This item provides that any contribution or payment collected under the SRC Act in respect of any part of a financial year starting before 1 July 1999 is taken to have been determined on the basis that it covered liability for compensation payable under that Act, and liability for any amount payable as a result of an action for non-economic loss in respect of an injury suffered by an employee during the period to which the premium related.

2.224 The item further provides that any act or thing that was done by the Commonwealth, Comcare or the Commission under the SRC Act as in force at any time before or after the commencement of the item, before 1 July 1999 is not invalid on the basis that there was no capacity, at the time of the injury, to collect a contribution or premium to cover liability for amounts payable as a result of such an action.

2.225 For the purposes of this item, *action for non-economic loss* means any action, formal or informal, to recover an amount for damages for non-economic loss as a result of an injury suffered by an employee that is taken by an employee against another employee or against the employer, whether it is the Commonwealth, a Commonwealth authority or a licensed corporation, and which follows an election under subsection 45(1).

**PART 11 – AMENDMENTS CONSEQUENTIAL ON CHANGED ADMINISTRATIVE LAW ARRANGEMENTS**

**Item 81 – Subsection 34R(1)**
2.226 This item is consequential to the commencement of legislation that establishes the Administrative Review Tribunal, and would amend proposed subsection 34R(1) to reflect changed administrative law arrangements proposed by the *Administrative Review Tribunal Bill 2000*.

**Item 82 – Subsection 34R(2)**

2.227 This item is consequential to the commencement of legislation that establishes the Administrative Review Tribunal, and would replace a reference in subsection 34R(2) to “Administrative Appeals Tribunal Act 1975” with a reference to “Act that establishes the Administrative Review Tribunal”.

**Item 83 – At the end of section 34R**

2.228 This item is consequential to the commencement of legislation that establishes the Administrative Review Tribunal, and would add a note at the end of section 34R specifying that the short title of the Act that establishes the Administrative Review Tribunal is either the *Administrative Review Tribunal Act 2000* or the *Administrative Review Tribunal Act 2001*.

**PART 12 – OTHER AMENDMENTS**

**Item 84 – Subsection 4(1) (at the end of paragraphs (a) to (f) of the definition of medical treatment)**

2.229 This item adds the word ‘or’ at the end of each paragraph of the definition of medical treatment, consistent with current drafting practice, as the definition is being amended by the following substantive item.

**Item 85 – Subsection 4(1) (at the end of the definition of medical treatment)**

2.230 This item provides for an expansion of the definition of medical treatment under the SRC Act, by regulations. This is intended to allow the definition to include therapeutic treatment by a range of health professionals, without the need for referral by a medical practitioner. This amendment will enable the SRC Act to be brought and kept in line with current medical practices.

**Item 86 – Subsection 4(1) (at the end of the definition of rehabilitation authority)**

2.231 The SRC Act provides that a rehabilitation authority is responsible for co-ordinating the arrangements for reassessment and rehabilitation of an employee. The definition of rehabilitation authority is defined under subsection 4(1) of the SRC Act. The definition does not currently cover members of the Defence Force as, although they are defined as employees for the purposes of the Act, they are not employed by an exempt authority, a licensed authority, a licensed corporation or a Department or Commonwealth authority.
2.232 The amendment proposes to insert a paragraph in the definition at subsection 4(1) designating the Chief of the Defence Force as a rehabilitation authority thus providing coverage for the members of the Defence Force.

**Item 87 – Subsection 21A(1)**

2.233 This item will correct a spelling error in the SRC Act.

**Item 88 – At the end of section 41A**

2.234 This item will allow the Chief of the Defence Force to delegate the relevant powers and functions to an officer or employee of the Commonwealth.

**Item 89 – Subsection 43(1)**

2.235 This item will correct a minor grammatical error in the SRC Act.

**Item 90 – Section 47 (penalty)**  
**Item 91 – Subsection 48(2) (penalty)**

2.236 These items will convert existing penalties to penalty units. (This measure is explained in the notes above on items 12, 13 and 14 in Schedule 1 to the Bill.)

**Item 92 – Paragraph 54(4)(a)**

2.237 These items will correct a minor grammatical error in the SRC Act.

**Item 93 – Paragraph 89E(1)(fa)**

2.238 This item will remove the requirement that the member of the Commission who, in the Minister’s opinion, represents the interests of those associated with the Defence Force, be a member of the Defence Force.

**Item 94 – After paragraph 89E(1)(fa)**

2.239 This item will include, as a member of the Commission, a member who has been nominated by the Chief Minister of the Australian Capital Territory to represent the interests of Australian Capital Territory public sector employers.

**Item 95 – At the end of section 89R**

2.240 Section 89R of the SRC Act provides that the SRCC may, in writing, delegate all or any of its functions and powers to the Chief Executive of Comcare, or a member of the SRCC. Where a power is so delegated section 34AB(b) of the *Acts Interpretation Act 1901* provides that the delegate does not have power to sub-delegate these powers.
2.241 This provision will override the general rule by providing that the Chief Executive Officer of Comcare may sub-delegate functions and powers that have been delegated to the office by the SRCC or a member of the SRCC. The purpose of the amendment is to allow those functions and powers of the SRCC which are purely administrative in nature to be carried out by members of the staff of Comcare.

Item 96 – Subsections 96C(2) and (3)
Item 97 – Paragraph 96F(1)(b)
Item 98 – Subsections 96J(3) and 96K(1)
Item 99 – Subsection 98(2)

2.242 These items propose minor technical amendments, to reflect changes in terminology arising under the Public Service Act 1999.

Item 100 – Subsection 120(3)

2.243 This item will correct a cross-referencing error in the existing provisions.

Item 101 – Subsection 120(4) (penalty)

2.244 This item will convert a penalty into penalty units. (This measure is explained in the notes above on items 12, 13 and 14 in Schedule 1 to the Bill.)

Item 102 – Section 121

2.245 This item proposes a minor technical amendment. Section 121 of the Safety, Rehabilitation and Compensation Act 1988 (the SRC Act) sets out the instruments that are disallowable for the purposes of section 46A of the Acts Interpretation Act 1901. It is proposed that declarations made under subsection 5(12) of the SRC Act should be added to the other instruments that are disallowable under section 121. (Subsection 5(12) provides that the Chief Minister of the Australian Capital Territory may request the Minister to declare in writing that an authority or body or office established by an ACT enactment is not an employer for the purposes of the SRC Act.)

Item 103 – Subparagraph 124(8)(b)(i)

2.246 This item proposes a minor drafting amendment in the manner of reference to a previous Act.

Item 104 – After section 124

2.247 This item will include an additional transitional provision in the SRC Act to reflect an existing administrative arrangement between the Northern Territory and Comcare.

2.248 New section 124A provides that the Northern Territory shall reimburse Comcare for payments of compensation made by Comcare to persons employed by the Northern Territory
government during the period 1 July 1978 to 1 January 1987, and who were injured during that time.

2.249 New section 124A further provides that the Northern Territory shall reimburse Comcare for the administrative costs incurred by Comcare in managing claims relating to these employees.

**Item 105 – After subsection 131(2)**  
**Item 106 – After subsection 131(3)**  
**Item 107 – Subsections 131(5) and (6) and 132(5)**

2.250 Sections 131 and 132 of the SRC Act contain transitional arrangements for former employees. Section 131 applies to former employees under 65 who receive superannuation benefits and are unable to work. Section 132 applies to former employees under 65 who do not receive superannuation benefits and are unable to work.

2.251 Items 105 and 106 will amend subsections 131(2) and (3) to ensure that the benefit paid to these persons does not fall below the level of 70% of indexed normal weekly earnings.

2.252 Item 107 will correct a technical error in subsections 131(5) and (6) and 132(5).
SCHEDULE 3 – AMENDMENT OF OTHER ACTS

Equal Opportunity for Women in the Workplace Act 1999

Item 1 – Subsection 17(1)

3.1 The Equal Opportunity for Women in the Workplace Act 1999 provides at section 13B that employers must lodge a public report on their equal opportunity for women in the workplace programs within two months after the end of the period to which the report relates. Section 17 of the Act relates to applications for extensions of time for the lodgement of public reports, and enables such applications to be made “before the end of the 3 months within which the relevant employer is required to lodge…a report under section 13B”.

3.2 It is apparent that there is an anomaly between the provisions of sections 13B and 17. The two month time frame stipulated in section 13B is the policy intention of the Act, as established by Parliament with the passage of the Equal Opportunity for Women in the Workplace Amendment Act 1999, which introduced section 13B in its current form.

3.3 The proposed amendment to replace the reference in subsection 17(1) to three months with a reference to two months will ensure consistency within the Act and alleviate any confusion which may arise as a result of the reference to two different time periods.

Item 2 – Subsection 32(1) (penalty)

3.4 This item will convert an existing penalty to penalty units. The change is formal, and does not alter the level of penalty. For an explanation, see the explanatory note above on items 12, 13 and 14 of Schedule 1 to the Bill.

Income Tax Assessment Act 1936

Item 3 – Paragraph 16(4)(g)

3.5 Subsection 16(4) of the Income Tax Assessment Act 1936 (the ITAA) contains exceptions to the prohibition against disclosure by a taxation officer of any information respecting the affairs of another person acquired in the course of their duties as an officer. Paragraph 16(4)(g) currently exempts the provision of such information to “the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees established by section 68 of the Commonwealth Employees’ Rehabilitation and Compensation Act 1988 for the purposes of that Act”.

3.6 Amendments to the Commonwealth Employees’ Rehabilitation and Compensation Act 1988 in 1992 separated the regulatory and service functions then performed by the former Commission between Comcare and a renamed Commission and renamed the Act the Safety, Rehabilitation and Compensation Act 1988 (the SRC Act). There were, however, no consequential amendments to the ITAA at the time. This has meant that where Comcare investigated cases of potential fraud, it could not access records of the ATO even though the provisions of the SRC Act make it clear that Comcare should be able to access these records.
3.7 This item proposes the necessary amendment, consequential upon the 1992 changes, to allow taxation officers to provide information to both Comcare and the Safety, Rehabilitation and Compensation Commission, for purposes consistent with the respective functions of those bodies under the SRC Act.


Item 4 – Section 3 paragraph (b) of the definition of nominating authority
Item 5 – Paragraphs 10(1)(c) and 21(6)(b)

3.8 The provisions to be amended by these items refer to the Confederation of Australian Industry, as one of the bodies which nominates members to the National Occupational Health and Safety Commission. These items propose amendments consequential to the Confederation of Australian Industry changing its name to the Australian Chamber of Commerce and Industry.

Item 6 – Section 46 (penalty)
Item 7 – Subsection 47(1) (penalty)
Item 8 – Section 48 (penalty)
Item 9 – Section 49 (penalty)
Item 10 – Subsection 62(2) (penalty)
Item 11 – Subsection 62(3) (penalty)

3.9 These items will convert existing penalties to penalty units. The changes are formal, and do not alter the level of penalty. For an explanation, see the explanatory notes above on items 12, 13 and 14 of Schedule 1 to the Bill.


Item 12 – Subsection 67B(5)

3.10 This item proposes amendment of the section of the Occupational Health and Safety (Commonwealth Employment) Act 1991 (the OHSCE Act) which is concerned with estimates of contributions under that Act, consequential on the amendments proposed by Part 10 of Schedule 2 to this Bill, which will rationalise scheme funding under the Safety, Rehabilitation and Compensation Act 1988 and the OHSCE Act.