

Compensation (Commonwealth Employees)

No. 48 of 1971

An Act to make provision for Compensation in respect of Employees of the Commonwealth and certain other Persons by reason of Injury or Disease, or Loss or Destruction of, or Damage to, certain Property, occurring in Circumstances connected with their Employment.

[Assented to 25 May 1971]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as the *Compensation (Commonwealth Employees) Act 1971*.

Commencement.

2.—(1.) Sections 1 and 2 of this Act, Part II., Division 2 of Part V., Part VIII. and sub-section (3.) of section 123 of this Act shall come into operation on the day on which this Act receives the Royal Assent.

(2.) The remaining provisions of this Act shall come into operation on a date to be fixed by Proclamation and, upon the coming into operation of those provisions, Part VIII. shall be deemed to be repealed.

Parts.

3. This Act is divided into Parts, as follows:—

Part I.—Preliminary (Sections 1-8).

Part II.—Commissioner for Employees' Compensation (Sections 9-24).

Part III.—Compensation (Sections 25-52).

Part IV.—Making and Determination of Claims (Sections 53-61).

Part V.—References to Compensation Tribunals and Applications to Prescribed Courts.

Division 1.—Preliminary (Sections 62-63).

Division 2.—Constitution of Compensation Tribunals (Sections 64-75).

Division 3.—References to Compensation Tribunals (Sections 76-89).

Division 4.—Applications to Prescribed Courts (Sections 90-93).

Division 5.—Appeals from Compensation Tribunals and Prescribed Courts (Sections 94-96).

Part VI.—Liabilities arising otherwise than under this Act (Sections 97-103).

Part VII.—Transitional (Sections 104-108).

Part VIII.—Amendments of the *Commonwealth Employees' Compensation Act 1930-1970* (Sections 109-114).

Part IX.—Miscellaneous (Sections 115-123).

Repeal

4.—(1.) The Acts specified in the First Schedule to this Act are repealed.

(2.) Notwithstanding section 8 of the *Acts Interpretation Act 1901—1966*, the Commonwealth is not liable, on or after the proclaimed date, to make any payments under the *Commonwealth Workmen's Compensation Act 1912* or the *Commonwealth Employees' Compensation Act 1930-1971* but section 8 of the *Acts Interpretation Act 1901-1966* otherwise applies in relation to the repeals effected by the last preceding sub-section to the extent to which its application would not be inconsistent with the operation of any provision of this Act.

Interpretation.

5.—(1.) In this Act, unless the contrary intention appears—

“adoption” means adoption in pursuance of the law of a State or Territory of the Commonwealth or of a country other than Australia;

“child in relation to whom this Act applies” means—

(a) a person under the age of sixteen years; or

(b) a person who—

(i) has attained the age of sixteen years but is under the age of twenty-one years;

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

(iii) is not ordinarily in employment or engaged in work on his own account;

“**Compensation Tribunal**” means a Commonwealth Employees' Compensation Tribunal established under section 64 of this Act;

“dependant”, in relation to a deceased employee, means—

(a) the spouse, father, mother, step-father, step-mother, mother-in-law, grandfather, grandmother, son, daughter, step-son, step-daughter, grandson, granddaughter, brother, sister, half-brother or half-sister of the employee;

(b) a person in relation to whom the employee stood *in loco parentis* or who stood *in loco parentis* to the employee; or

(c) a woman who, throughout the period of three years immediately before the date of the death of the employee, although not legally married to him, lived with him as his wife on a permanent and *bona fide* domestic basis,

being a person who was wholly or partly dependent upon the employee at the date of the death of the employee;

“dependent” means dependent for economic support;

“disease” includes any physical or mental ailment, disorder, defect or morbid condition, whether of sudden onset or gradual development;

“employee” means a person to and in relation to whom this Act applies by virtue of section 7 of this Act;

“injury” means any physical or mental injury and includes the aggravation, acceleration or recurrence of any physical or mental injury but, subject to section 29 of this Act, does not include a disease or the aggravation, acceleration or recurrence of a disease;

“Judge” includes—

(a) an Acting Judge;

(b) a person appointed to judicial office and having the rank and style of Judge; and

(c) a person appointed to acting judicial office and having the rank and style of Acting Judge;

“loss”, in relation to an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by an employee, includes destruction;

“medical treatment” means—

(a) medical or surgical treatment by, or under the supervision of, a legally qualified medical practitioner;

(b) therapeutic treatment obtained at the direction of a legally qualified medical practitioner;

(c) dental treatment by, or under the supervision of, a legally qualified dentist;

(d) therapeutic treatment by, or under the supervision of, a physiotherapist or masseur registered under the law of a State or Territory of the Commonwealth providing for the registration of physiotherapists or masseurs, as the case may be;

(e) an examination, test or analysis carried out on, or in relation to, an employee at the request or direction of a legally qualified medical practitioner or legally qualified dentist and the provision of a report in respect of such an examination, test or analysis;

- (f) the supply, replacement or repair of an artificial limb or other artificial substitute or of a medical, surgical or other similar aid or appliance;
- (g) treatment and maintenance as a patient at a hospital;
- (h) nursing attendance, and the provision of medicines, medical and surgical supplies and curative apparatus, whether in a hospital or otherwise; or
- (j) treatment provided or arranged by the Director-General of Social Services in pursuance of Part VIII. of the *Social Services Act 1947-1971* and maintenance while receiving such treatment;

“permanent” means likely to continue indefinitely;

“prescribed authority of the Commonwealth” means—

- (a) a body corporate that is incorporated for a public purpose by a law of the Commonwealth other than such a body corporate that is declared by the regulations to be a body corporate in relation to which this Act does not apply; and
- (b) a body corporate that is incorporated for a public purpose by a law of a Territory of the Commonwealth and is declared by the regulations to be a body corporate in relation to which this Act applies;

“prescribed Court” means—

- (a) the Workers’ Compensation Commission of New South Wales;
- (b) the Industrial Court of South Australia;
- (c) a court of a State (other than New South Wales or South Australia) or of a Territory of the Commonwealth, being a court that has limited civil jurisdiction in personal actions and can be constituted only by a Judge;
- (d) a court that has limited civil jurisdiction in personal actions and can be constituted only by a Judge or a stipendiary magistrate, being a court of a State (other than New South Wales or South Australia) or of a Territory of the Commonwealth in which there is no court of a kind referred to in the last preceding paragraph; or
- (e) any other court that has limited civil jurisdiction in personal actions, being a court of a State (other than New South Wales or South Australia) or of a Territory of the Commonwealth in which there is no court of a kind referred to in either of the last two preceding paragraphs;

“separate living accommodation”, in relation to an employee, means living accommodation provided for the exclusive use of the employee, or of the employee and his family, being accommodation that includes cooking, bathing and sanitary facilities;

“spouse”, in relation to an aboriginal native, or a deceased aboriginal native, of Australia or of a Territory of the Commonwealth not forming part of the Commonwealth, includes a person who is or was recognized as the husband or wife of that aboriginal native by the custom prevailing in the tribe or group of aboriginal natives of Australia or of such a Territory to which that aboriginal native belongs or belonged;

“the Clerk”, in relation to a Compensation Tribunal, means the Clerk of that Compensation Tribunal, and includes a Deputy Clerk of that Compensation Tribunal;

“the Commissioner” means—

(a) subject to the next succeeding paragraph, the person holding office as the Commissioner for Employees’ Compensation, including a person appointed to act as the Commissioner for Employees’ Compensation; and

(b) in relation to the receipt, holding or payment of, or other dealing with, moneys or the acquisition, holding or disposal of other property—the corporation established by section 9 of this Act;

“the proclaimed date” means the date fixed by Proclamation under sub-section (2.) of section 2 of this Act;

“therapeutic treatment” includes an examination, test or analysis for the purpose of diagnosing, or treatment for the purpose of alleviating, an injury.

(2.) For the purposes of paragraph (a) of the definition of “dependant” in the last preceding sub-section, relationships referred to in that paragraph shall be taken to include illegitimate relationships and relationships by adoption and relationships that are traced through illegitimate relationships or relationships by adoption.

(3.) For the purposes of this Act, a person shall be deemed to have been wholly or partly dependent upon an employee at the date of the death of the employee if the person would have been so dependent but for an incapacity of the employee that resulted from an injury.

(4.) For the purposes of this Act other than sub-section (5.) of section 43, a son or daughter of a deceased employee who was born alive after the death of the employee shall be treated as if he or she had been born immediately before the death of the employee and was wholly dependent upon the employee at the date of his death.

(5.) In ascertaining for the purposes of this Act whether a child is or was dependent upon an employee, any amount of child endowment paid or payable in respect of the child under Part VI. of the *Social Services Act 1947-1971* shall not be taken into account.

(6.) A reference in this Act to an injury to an employee shall, unless the contrary intention appears, be read as a reference to an injury to the employee in respect of which the Commonwealth is liable to pay compensation under this Act.

(7.) A reference to an employee in a provision of this Act that is applicable to an employee at a time after the Commonwealth has incurred a liability in relation to the employee under this Act shall, unless the contrary intention appears, be read as including a reference to a person who has ceased to be an employee.

(8.) A reference in this Act to the institution of a proceeding under Part V. in respect of a determination shall be read as a reference to the making of a request under paragraph (a) of sub-section (1.) of section 63 of this Act in respect of a matter or question to which the determination relates or to the making of an application under paragraph (b) of sub-section (1.) of that section in respect of the determination.

(9.) Where a Compensation Tribunal or a Court varies a determination, or sets aside a determination and makes a determination in substitution for the determination so set aside, the determination as so varied or the substituted determination shall, for the purposes of this Act other than section 61 and Part V., unless the contrary intention appears, be deemed to be a determination of the Commissioner.

(10.) In this Act, unless the contrary intention appears, a reference to a loss to an employee includes a reference to an impairment of speech of the employee referred to in sub-section (10.) of section 39 of this Act.

(11.) For the purposes of this Act—

- (a) the death, or a disfigurement, incapacity or disablement, of an employee, or a loss suffered by an employee, shall be taken to have resulted from an injury to the employee, from a disease contracted by the employee or from an aggravation, acceleration or recurrence of a disease suffered by the employee if the injury, the disease or the aggravation, acceleration or recurrence, as the case may be, contributed to the death, disfigurement, incapacity, disablement or loss; and
- (b) the loss of, or damage to, an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by an employee shall be taken to have resulted from an accident if the accident contributed to the loss or damage.

Application of Act.

6. Subject to section 120 of this Act, this Act applies within and outside Australia and extends to all the Territories of the Commonwealth.

Persons in relation to whom Act applies.

7.—(1.) Subject to this section, this Act applies to and in relation to a **person who is employed by the Commonwealth** or by a prescribed authority of the Commonwealth whether he is so employed under a law of the Commonwealth or of a Territory of the Commonwealth or under a contract of service or apprenticeship.

(2.) Without limiting by implication the generality of the last preceding sub-section—

(a) a Commonwealth Police Officer or a member of the Police Force of a Territory of the Commonwealth forming part of the Commonwealth;

(b) a member of the Defence Force; or

(c) a person (other than a person to whom the next succeeding sub-section applies) who is the holder of or is acting in—

(i) an office that is established by a law of the Commonwealth other than an office that is declared by the regulations to be an office in relation to which this Act does not apply; or

(ii) an office that is established by a law of a Territory of the Commonwealth and is declared by the regulations to be an office in relation to which this Act applies,

shall, for the purposes of this Act, be deemed to be employed by the Commonwealth, and his employment shall, for those purposes, be deemed to be constituted by his performance of his duties as such a Commonwealth Police Officer, member of the Police Force of a Territory of the Commonwealth or member of the Defence Force or the duties of that office, as the case may be.

(3.) A person who—

(a) constitutes, or is acting as the person constituting, a prescribed authority of the Commonwealth; or

(b) is, or is acting as, a member of such an authority or is a deputy of such a member,

shall, for the purposes of this Act, be deemed to be employed by that authority, and his employment shall, for those purposes, be deemed to be constituted by his performance of the duties of the authority, his duties as such a member or person acting as such a member or his duties as such a deputy, as the case may be.

(4.) A person who is ordinarily engaged for employment at a prearranged place at which employers engage persons for employment and whose last employer under an engagement at that place was the Commonwealth or a prescribed authority of the Commonwealth shall, for the purposes of this Act, be deemed to be employed by the Commonwealth or that authority, as the case may be, until he is next engaged under such

an engagement, and his employment shall, for those purposes, be deemed to be constituted by his attendance at that place for the purpose of seeking such an engagement, but this sub-section does not operate to render the Commonwealth liable to pay compensation in respect of an injury to an employee sustained during an attendance to which this sub-section applies if the injury was sustained by reason that he voluntarily and unreasonably subjected himself to an abnormal risk of injury.

(5.) The regulations may provide—

(a) that a person who is included in a prescribed class of persons, being a class of persons who engage in activities or perform any acts at the request or direction, for the benefit, or in pursuance of a requirement made by or under a law, of the Commonwealth, or at the request or direction, or for the benefit, of a prescribed authority of the Commonwealth, shall, for the purposes of this Act, be deemed to be employed by the Commonwealth or by that authority, as the case may be; and

(b) that the employment of the person shall, for those purposes, be deemed to be constituted by the performance by the person of such acts, or of acts included in such classes of acts, as are prescribed.

(6.) For the purposes of the application of this Act in relation to a person employed by a prescribed authority of the Commonwealth, references in this Act to the Commonwealth shall be read as references to that authority.

(7.) This Act does not apply to or in relation to—

(a) a member of the Parliament or a Minister of State;

(b) a person who is a Judge as defined by section 4 of the *Judges' Pensions Act 1968*;

(c) an officer or employee of the Public Service of a Territory of the Commonwealth not forming part of the Commonwealth; or

(d) a person who is a seaman as defined by section 3 of the *Seamen's Compensation Act 1911-1971*.

(8.) This Act does not apply in relation to service of a member of the Defence Force in respect of which provision for the payment of pension is made by the *Repatriation Act 1920-1971*, the *Repatriation (Far East Strategic Reserve) Act 1956-1966*, the *Repatriation (Special Overseas Service) Act 1962-1968*, the *Interim Forces Benefits Act 1947-1966* or the *Native Members of the Forces Benefits Act 1957-1968*.

Employment to include attendances at certain places.

8.—(1.) For the purposes of this Act, the employment of an employee by the Commonwealth includes the attendance of the employee at a university, school or other place of education, training or research—

(a) as a condition of his employment by the Commonwealth;

- (b) at the request or direction of the Commonwealth; or
- (c) with the approval of the Commonwealth,

other than an attendance to which paragraph (c) of this sub-section applies as part of a full time course of study, training or research for the purposes of which the employee has been granted leave of absence from his employment without salary, wages or pay.

(2.) For the purposes of this Act, the employment of an employee by the Commonwealth includes the attendance of the employee at a place—

- (a) in order to undergo an examination, or to obtain a medical certificate, for the purposes of this Act;
- (b) in connexion with the replacement or repair of an artificial limb or other artificial substitute, or of a medical, surgical or other similar aid or appliance, in respect of which compensation is payable under section 28 of this Act;
- (c) in order to receive medical treatment in respect of the cost of which compensation is payable under section 37 of this Act;
- (d) in order to undergo vocational training provided in pursuance of section 38 of this Act;
- (e) in order to receive compensation payable to him under this Act; or
- (f) in order to receive any moneys that are due to him under the terms of his employment and, in pursuance of the terms of his employment or any agreement or arrangement between him and the Commonwealth, are available, or are reasonably expected by him to be available, for collection by him at that place.

(3.) For the purposes of this Act other than section 32, the employment of an employee by the Commonwealth includes the attendance of the employee at his place of employment (other than a part of that place constituting separate living accommodation of the employee) at any time during a period when he is not required to engage in his employment, where the attendance is reasonably incidental to his employment.

(4.) Without limiting by implication the generality of the last preceding sub-section, the attendance of an employee at his place of employment shall be taken, for the purposes of that sub-section, to be reasonably incidental to his employment if—

- (a) the attendance occurred during an ordinary recess in his employment;
- (b) immediately before the commencement of the period of the attendance he made a journey that is, by reason of section 33 of this Act, to be deemed for the purposes of sub-section (1.) of section 32 of this Act to have been a journey to his employment; or

(c) immediately after the expiration of the period of the attendance he made, or intended to make, a journey that, by reason of section 33 of this Act, is to be, or would have been, deemed for the purposes of sub-section (1.) of section 32 of this Act to have been a journey from his employment.

(5.) For the purposes of this Act other than section 32, the employment of an employee by the Commonwealth includes the attendance of the employee at any place (other than a place constituting separate living accommodation of the employee) from which, by the terms of his employment, he is not at the time of the attendance at liberty to absent himself.

(6.) This section does not operate to render the Commonwealth liable to pay compensation in respect of an injury to an employee sustained during an attendance to which this section applies if the injury was sustained by reason that he voluntarily and unreasonably subjected himself to an abnormal risk of injury.

(7.) This section shall not be construed as limiting by implication the generality of any other provision of this Act.

PART II.—COMMISSIONER FOR EMPLOYEES' COMPENSATION.

Commissioner for Employees' Compensation.

9.—(1.) For the purposes of this Act there shall be a Commissioner for Employees' Compensation, who shall be appointed by the Governor-General.

(2.) The Commissioner—

(a) is a corporation sole under the name of "Commissioner for Employees' Compensation";

(b) has perpetual succession;

(c) shall have an official seal; and

(d) is capable, in his corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued.

(3.) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Commissioner affixed to a document and shall presume that it was duly affixed.

Tenure of office.

10.—(1.) Subject to this Part, the Commissioner holds office for such period, not exceeding seven years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(2.) A person who has attained the age of sixty-five years shall not be appointed or re-appointed as the Commissioner, and a person shall not be appointed or re-appointed as the Commissioner for a period that extends beyond the date on which he will attain the age of sixty-five years.

Salary and allowances.

11.—(1.) The Commissioner shall be paid such salary as the Parliament provides but, until the thirty-first day of December, One thousand nine hundred and seventy-one, that salary shall be as prescribed.

(2.) The Commissioner shall be paid such allowances as are prescribed.

Leave of absence.

12. The Minister may grant leave of absence to the Commissioner upon such terms and conditions as to salary or otherwise as the Minister determines.

Dismissal.

13. The Governor-General may terminate the appointment of the Commissioner for inefficiency, misbehaviour or physical or mental incapacity.

Resignation.

14. The Commissioner may resign his office by writing under his hand delivered to the Governor-General but the resignation does not have effect until it is accepted by the Governor-General.

Vacation of office.

15.—(1.) If the Commissioner—

- (a) engages in paid employment outside the duties of his office without the approval of the Minister;
- (b) absents himself from duty for fourteen consecutive days, or for twenty-eight days in any twelve months, without leave granted by the Minister; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit,

the Governor-General shall, by notice in the *Gazette*, terminate the appointment of the Commissioner.

(2.) The Minister shall not give an approval for the purposes of paragraph (a) of the last preceding sub-section unless he is satisfied that the paid employment will not interfere with the performance of the duties of the Commissioner under this Act.

Rights of public servant appointed as Commissioner.

16. If a person appointed to the office of Commissioner was, immediately before his appointment, an officer of the Public Service of the Commonwealth—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service as the Commissioner shall be taken into account as if it were service in the Public Service of the Commonwealth; and
- (c) the *Officers' Rights Declaration Act 1928-1969* applies as if this Act and this section had been specified in the Schedule to that Act.

Application of Superannuation Act.

17. For the purposes of sub-sections (3A.) and (4.) of section 4 of the *Superannuation Act 1922-1971*, the Commissioner shall be deemed to be required, by the terms of his appointment, to give the whole of his time to the duties of his office.

Oath or affirmation of allegiance and office.

18.—(1.) The Commissioner shall, before proceeding to discharge the duties of his office, make an oath or affirmation in accordance with the form of oath or affirmation in the Second Schedule to this Act.

(2.) The oath or affirmation shall be made before a justice of the peace or a commissioner for affidavits.

Acting Commissioner.

19.—(1.) Where the Commissioner is, or is expected to be, absent from duty, or there is a vacancy in the office of Commissioner, the Governor-General may appoint a person to act as the Commissioner during the absence or until the filling of the vacancy, but a person so appointed by reason of a vacancy in the office of Commissioner shall not act as the Commissioner for a continuous period of more than twelve months.

(2.) Where a person has been appointed to act as the Commissioner during an absence from duty of the Commissioner and the Commissioner ceases to hold office without having resumed duty, the period of appointment of the person so appointed shall be deemed to continue until it is terminated by the Governor-General, or until the expiration of twelve months from the date on which the Commissioner ceases to hold office, whichever first happens.

(3.) The Governor-General may at any time terminate an appointment under this section.

(4.) Sections 12, 14 and 18 of this Act apply in relation to a person appointed under this section in like manner as they apply in relation to the Commissioner.

(5.) Subject to this section, the Governor-General may determine the terms and conditions of an appointment under this section.

(6.) A person appointed to act as the Commissioner has all the powers and functions of the Commissioner under this Act.

Function and powers of Commissioner.

20.—(1.) Subject to this Act, the function of the Commissioner under this Act is to determine all matters and questions arising under this Act and the Commissioner is empowered to do all things necessary for the carrying out of that function.

(2.) In determining any matter or question under this Act, the Commissioner—

(a) shall be guided by equity, good conscience and the substantial merits of the case without regard to technicalities; and

(b) is not required to hold a formal or oral hearing and is not bound by the rules of evidence but shall give to any person who will be directly affected by the determination a fair opportunity of presenting his case.

(3.) A determination by the Commissioner shall be in writing.

(4.) Where a determination has been made under this Act—

(a) the Commissioner may, of his own motion, whether or not a proceeding has been instituted or completed under Part V. in respect of the determination, reconsider the determination and may, if he thinks fit, make a determination varying or revoking the first-mentioned determination; and

(b) the Commissioner shall, at the request of the Commonwealth or of the claimant or, where there is more than one claimant whose claim was dealt with by the determination, of any of the claimants, if a proceeding has not been instituted under Part V. in respect of the determination, reconsider the determination and may, if he thinks fit, make a determination varying or revoking the first-mentioned determination.

(5.) Where—

(a) a proceeding has been instituted under Part V. in respect of a determination by the Commissioner;

(b) before the completion of the proceeding, the Commissioner makes, under paragraph (a) of the last preceding sub-section, a determination varying or revoking the first-mentioned determination; and

(c) the proceeding is rendered abortive by reason of the later determination,

the Commonwealth is liable to reimburse the claimant, or, if there is more than one claimant whose claim was dealt with by the determination, to reimburse each of the claimants, for any costs reasonably incurred by him in connexion with that proceeding.

Bank accounts.

21.—(1.) For the purposes of this Act, the Commissioner may open and maintain an account or accounts, in Australia or elsewhere, with an approved bank or approved banks and shall maintain at all times at least one such account.

(2.) The Commissioner shall pay all moneys received by him into an account referred to in this section, and sections 27 to 30 (inclusive) of the *Audit Act* 1901-1969 do not apply in relation to those moneys.

(3.) In this section, “approved bank” means the Reserve Bank of Australia or a bank approved by the Treasurer for the purposes of this section.

Proper accounts to be kept.

22.—(1.) The Commissioner shall cause proper accounts and records to be kept, in relation to moneys and investments held by him, and shall do all things necessary to ensure that all payments out of moneys held by him are correctly made and properly authorized and that adequate control is maintained over moneys and investments held by him.

(2.) The Commissioner shall, at least once in each year, submit the accounts and records kept in accordance with the last preceding sub-section to the Auditor-General for inspection and audit.

Audit.

23.—(1.) The Auditor-General shall inspect and audit the accounts and records kept in accordance with the last preceding section and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his so doing.

(2.) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in the last preceding sub-section.

(3.) The Auditor-General shall, at least once in each year, report to the Minister the results of the inspection and audit carried out under sub-section (1.) of this section.

(4.) The Auditor-General or an officer authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Commissioner relating directly or indirectly to the receipt or payment of moneys by the Commissioner or to the acquisition, management or disposal of investments by the Commissioner.

(5.) The Auditor-General or an officer authorized by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

(6.) The Auditor-General or an officer authorized by him may require any person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized officer considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

(7.) A person who contravenes the last preceding sub-section is guilty of an offence punishable, upon conviction, by a fine not exceeding Two hundred dollars.

Delegation by Commissioner.

24.—(1.) The Commissioner may, by instrument in writing, delegate to an officer of, or a person employed by, the Commonwealth, a prescribed authority of the Commonwealth or the Administration of a Territory of the Commonwealth, either generally or otherwise as provided by the instrument of delegation, all or any of his powers and functions under this Act, except this power of delegation.

(2.) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation and this Act has effect in relation to the exercise of the power or the performance of the function by the delegate as if a reference in this Act to the Commissioner were a reference to the delegate.

(3.) A delegation under this section is revocable in writing at will and does not prevent the exercise of a power or the performance of a function by the Commissioner.

(4.) A person to whom a power or function has been delegated under this section shall, before proceeding to exercise that power or perform that function, make an oath or affirmation in accordance with the form of oath or affirmation in the Third Schedule to this Act.

(5.) The oath or affirmation shall be made before a justice of the peace or a commissioner for affidavits.

(6.) The Commissioner shall—

(a) cause a register to be kept for the purposes of this section; and

(b) cause to be entered in the register particulars of any delegation in force under this section.

(7.) The register kept in pursuance of the last preceding sub-section shall be open to inspection by the public at the office of the Commissioner at any reasonable time.

PART III.—COMPENSATION.

Average weekly earnings.

25.—(1.) For the purposes of this Part, the average weekly earnings of an employee before an injury shall be calculated in accordance with this section.

(2.) A reference in the succeeding provisions of this section to earnings of an employee in relation to any employment shall be read as including a reference to any allowance payable to the employee in respect of that

employment other than an allowance that is intermittent or is payable in respect of special expenses incurred or likely to be incurred by the employee in respect of that employment.

(3.) Where an employee was, at the date of the injury, employed by the Commonwealth only in part time employment or in employment in respect of which the employee was not paid, any earnings of the employee from any other employment shall be treated for the purposes of this section as if they were earnings of the employee from his employment by the Commonwealth.

(4.) Subject to the succeeding provisions of this section, the average weekly earnings of an employee before the injury shall be calculated in relation to the period immediately preceding the date of the injury in which he was continuously employed by the Commonwealth but any part of that period that was earlier than twelve months before that date shall be disregarded.

(5.) Subject to the next succeeding sub-section, if, during the period ascertained in accordance with the last preceding sub-section, the minimum amount per week payable to the employee in respect of his employment by the Commonwealth was varied as a result of the operation of a law of the Commonwealth or of a State or Territory of the Commonwealth, or as a result of the making, alteration or operation of an award, order, determination or industrial agreement, or of the doing of any other act or thing, under such a law, so much of that period as occurred before the variation took place or, if there was more than one variation, before the last variation took place, shall be disregarded for the purposes of the last preceding sub-section.

(6.) Where—

(a) as a result of a variation in the minimum amount per week payable to the employee in respect of his employment by the Commonwealth, a period that occurred before the variation took place would, by reason of the last preceding sub-section, be disregarded for the purposes of sub-section (4.) of this section; and

(b) if that period were so disregarded, it would be impracticable to calculate the average weekly earnings of the employee before the injury in accordance with sub-section (4.) of this section, or the average weekly earnings as so calculated would not fairly represent the rate per week at which the employee was being remunerated in respect of that employment before the injury,

that period shall not be so disregarded but the average weekly earnings of the employee during that period shall be taken to be the amount that would have been his average weekly earnings during that period if the variation had taken effect at the commencement of that period.

(7.) If, during any part of the period in relation to which the average weekly earnings of the employee before the injury are required to be calculated by virtue of the last three preceding sub-sections, the earnings of the employee were reduced, or the employee did not receive any earnings, by reason that he was absent from his employment owing to illness or otherwise, that part of that period shall be disregarded for the purposes of sub-section (4.) of this section.

(8.) Where, by reason of the shortness of the period during which the employee has been employed by the Commonwealth, it is impracticable to calculate the average weekly earnings of the employee before the injury in accordance with the last four preceding sub-sections, or the average weekly earnings as so calculated would not fairly represent the rate per week at which the employee was being remunerated in respect of that employment before the injury, the average weekly earnings, as calculated in accordance with the preceding provisions of this section, from employment by the Commonwealth before the date of the injury of an employee who was performing comparable work shall be taken to be the average weekly earnings of the first-mentioned employee before the injury.

(9.) Subject to sub-section (11.) of this section, if the minimum amount per week payable to the employee in respect of the employment by the Commonwealth in which he was engaged at the date of the injury would, if he had continued in that employment, have been increased—

- (a) upon the attainment by the employee of a particular age; or
- (b) upon the completion by the employee of a particular period of service,

a reference in this Part to the average weekly earnings of the employee before the injury shall be read as a reference to the amount that is, by virtue of the preceding provisions of this section, to be taken to be the amount of those average weekly earnings, increased by the same percentage as the percentage by which that minimum amount would have been so increased if the employee had continued in that employment.

(10.) Subject to the next succeeding sub-section, where—

- (a) the relevant employment of an employee is employment referred to in sub-section (4.) or sub-section (5.) of section 7, or sub-section (2.) of section 8, of this Act; and
- (b) the employee is not in receipt of earnings from any other employment at the date of the injury,

a reference in this Part to the average weekly earnings of the employee before the injury shall be read as a reference to an amount determined by the Commissioner to be the amount per week that the employee would have been able to earn at the date of the injury (including any amount that he would have been able to earn in respect of overtime) if he had engaged in suitable paid employment.

(11.) If the minimum amount per week payable in respect of employees included in a class of employees in which the employee was included at the date of the injury is increased or reduced on or after that date as a result of the operation of a law of the Commonwealth or of a State or Territory of the Commonwealth, or as a result of the making, alteration or operation of an award, order, determination or industrial agreement, or of the doing of any other act or thing, under such a law, the amount that is, by virtue of the preceding provisions of this section, to be taken to be the amount of the average weekly earnings of the employee before the injury shall be increased or reduced by the same percentage as the percentage by which that minimum amount was so increased or reduced, as the case may be.

(12.) In this section, "earnings" includes earnings in respect of overtime.

Employee deemed to be totally incapacitated if employment for which he is fitted is not available.

26. For the purposes of this Part, an employee shall be deemed to be totally incapacitated for work if his incapacity is such that he is fitted only for employment of a kind that is not commonly available and employment of that kind is not reasonably available to him.

Compensation for personal injuries.

27.—(1.) If personal injury arising out of or in the course of the employment of an employee by the Commonwealth is caused to the employee, the Commonwealth is, subject to this Act, liable to pay compensation in respect of that injury in accordance with this Act.

(2.) If an injury to an employee is intentionally self-inflicted, the Commonwealth is not liable under the last preceding sub-section to pay compensation in respect of that injury.

(3.) If an injury to an employee is not intentionally self-inflicted but is attributable to his serious and wilful misconduct, the Commonwealth is not liable under sub-section (1.) of this section to pay compensation in respect of that injury unless the injury results in the death or serious and permanent disablement of the employee.

(4.) An amount of compensation payable under a provision of this Act in respect of an injury is, unless the contrary intention appears, in addition to any amounts of compensation paid or payable under any other provision of this Act in respect of that injury.

Compensation for damage to artificial limbs, &c.

28.—(1.) Subject to this section, if an employee is involved in an accident arising both out of and in the course of the employment of the employee by the Commonwealth and the accident does not cause personal injury to the employee but results in the loss of, or damage to, an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by the employee, the Commonwealth is liable to pay to the employee compensation of an amount equal to the expenditure

reasonably incurred by the employee in the necessary replacement or repair of the artificial limb or other artificial substitute or of the medical, surgical or other similar aid or appliance, as the case may be.

(2.) For the purposes of the last preceding sub-section, expenditure incurred by an employee in the necessary replacement or repair of an artificial limb or other artificial substitute or of a medical, surgical or other similar aid or appliance shall be deemed to include any fees and charges paid or payable by the employee to a legally qualified medical practitioner, a legally qualified dentist or other qualified person for a consultation, examination, prescription or other service reasonably rendered in connexion with the replacement or repair.

(3.) The Commonwealth is not liable to pay compensation under this section if the loss or damage is attributable to the serious and wilful misconduct of the employee.

Compensation in respect of death, loss, disfigurement or incapacity through disease.

29.—(1.) Where—

- (a) an employee contracts a disease or suffers an aggravation, acceleration or recurrence of a disease; and
- (b) any employment of the employee by the Commonwealth was a contributing factor to the contraction of the disease or to the aggravation, acceleration or recurrence, as the case may be, whether or not the disease was contracted or the aggravation, acceleration or recurrence was suffered in the course of that employment,

the succeeding provisions of this section have effect.

(2.) If—

- (a) the death of the employee;
- (b) a loss to the employee of a kind referred to in section 39 or 40 of this Act;
- (c) facial disfigurement to the employee;
- (d) a loss to the employee of the sense of taste or smell; or
- (e) the total or partial incapacity for work of the employee,

results from the disease, or from the aggravation, acceleration or recurrence of the disease, or the employee obtained medical treatment in relation to the disease, or the aggravation, acceleration or recurrence of the disease, as the case may be, then, for the purposes of this Act, unless the contrary intention appears—

- (f) the contraction of the disease, or the aggravation, acceleration or recurrence, as the case may be, shall be deemed to be a personal injury to the employee arising out of the employment of the employee by the Commonwealth; and

- (g) the date of the death, the date of the loss, the date of the disfigurement, the date of the commencement of the incapacity or the date on which the medical treatment was first obtained, whichever is the earlier, shall be deemed to be the date of the injury.

(3.) The last preceding sub-section does not apply in relation to a disease, or an aggravation, acceleration or recurrence of a disease, if the employee has at any time, for purposes connected with his employment or proposed employment by the Commonwealth, made a wilful and false representation that he did not suffer, or had not previously suffered, from that disease.

Certain diseases to be deemed to be contributed to by employment.

30. Without limiting by implication the operation of the last preceding section, where—

- (a) an employee has suffered or is suffering from a disease or the death of an employee results from a disease;
- (b) the disease is a disease of a kind specified in the regulations as a disease that is related to employment of a kind so specified; and
- (c) the employee was, at any time before symptoms of the disease first became apparent, engaged by the Commonwealth in employment of that kind,

then, for the purposes of this Act, unless the contrary is established, the employment in which the employee was so engaged by the Commonwealth shall be deemed to have been a contributing factor to his contraction of the disease.

Provisions relating to diseases.

31.—(1.) Any employment in which an employee who has contracted a disease was engaged by the Commonwealth at any time before symptoms of the disease first became apparent shall, unless the contrary is established, be taken for the purposes of this Act to have been a contributing factor to his contraction of the disease if the incidence of that disease among persons who have engaged in such employment is significantly greater than the incidence of that disease among persons who have engaged in employment generally in the place where the employee was ordinarily employed.

(2.) Any employment in which an employee who has suffered an aggravation, acceleration or recurrence of a disease was engaged by the Commonwealth at any time before symptoms of the aggravation, acceleration or recurrence first became apparent shall, unless the contrary is established, be taken for the purposes of this Act to have been a contributing factor to the aggravation, acceleration or recurrence if the incidence of the aggravation, acceleration or recurrence of that disease among persons suffering from that disease who have engaged in such employment is significantly greater than the incidence of the aggravation, acceleration or recurrence of that disease among persons suffering from that disease who have engaged in employment generally in the place where the employee was ordinarily employed.

(3.) The death of an employee shall be taken for the purposes of this Act to have been contributed to by a disease or by an aggravation, acceleration or recurrence of a disease, if, but for that disease, or that aggravation, acceleration or recurrence, as the case may be, the death of the employee would have occurred at a significantly later time.

(4.) An incapacity for work or facial disfigurement of, or a loss suffered by, an employee shall be taken for the purposes of this Act to have been contributed to by a disease, or by an aggravation, acceleration or recurrence of a disease, if, but for that disease, or that aggravation, acceleration or recurrence, as the case may be—

- (a) the incapacity, disfigurement or loss would not have occurred;
- (b) the incapacity would have commenced, or the disfigurement or loss would have occurred, at a significantly later time; or
- (c) the extent of the incapacity, disfigurement or loss would have been significantly less.

(5.) This section shall not be construed as limiting by implication the generality of the provisions of section 29 of this Act.

Journey to or from employment.

32.—(1.) Subject to this section, this Act applies in relation to a journey by an employee to his employment by the Commonwealth (irrespective of the place at which the journey commenced) or in relation to a journey by an employee from his employment by the Commonwealth (irrespective of the place at which the journey is intended to end) as if the journey constituted part of his employment by the Commonwealth.

(2.) The next two succeeding sections shall not be construed as limiting by implication the generality of the last preceding sub-section.

(3.) Sub-section (1.) of this section—

- (a) does not apply, and shall not be deemed to apply, in relation to a journey or a part of a journey by a route that is not reasonably direct having regard to the means of transport used unless—
 - (i) the journey or that part of the journey was made by that route for a reason connected with the employment of the employee by the Commonwealth; or
 - (ii) in the circumstances of the particular case, the nature of the risk of sustaining an injury, contracting a disease, suffering an aggravation, acceleration or recurrence of a disease or suffering loss of, or damage to, an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by the employee, as the case may be, was not substantially changed, and the extent of that risk was not substantially increased, by reason that the journey or that part of the journey was made by that route; and

(b) does not apply, and shall not be deemed to apply, in relation to a part of a journey made after a substantial interruption of the journey, being an interruption made for a reason unconnected with the employment of the employee by the Commonwealth, unless, in the circumstances of the particular case, the nature of the risk referred to in sub-paragraph (ii) of the last preceding paragraph was not substantially changed, and the extent of that risk was not substantially increased, by reason of that interruption.

(4.) Where, on a day on which an employee has engaged in his employment, the employee makes a journey to or from his place of employment during an ordinary recess in his employment, the journey shall, for the purposes of sub-section (1.) of this section, be deemed to be a journey to or from his employment by the Commonwealth, as the case may be.

Journey to or from place of employment.

33.—(1.) Subject to this section and sections 35 and 36 of this Act, where an employee (other than an employee to whom the next succeeding section applies) makes a journey to or from his place of employment, then—

- (a) in the case of a journey to that place of employment—if the journey ended or would have ended during the period of one hour immediately before the time when he commenced work or would have commenced work (in this section called a “prescribed period”), the journey shall be deemed, for the purposes of sub-section (1.) of the last preceding section, to have been a journey to his employment by the Commonwealth; and
 - (b) in the case of a journey from that place of employment—if the journey commenced during the period of one hour immediately after the time when he ceased work (in this section called a “prescribed period”), the journey shall be deemed, for the purposes of sub-section (1.) of the last preceding section, to have been a journey from his employment by the Commonwealth.
- (2.) Where—
- (a) an employee makes a journey in relation to which paragraph (a) of the last preceding sub-section does not apply by reason only that the journey ended or would have ended before the commencement of the prescribed period referred to in that paragraph; and
 - (b) the journey was made by the last means of transport—
 - (i) that was conveniently available for use by the employee;
 - (ii) that would ordinarily have enabled the employee to complete the journey before the time at which he intended to commence work; and
 - (iii) that was of a kind that the employee could, having regard to all the circumstances of the case, have been reasonably expected to use,

the journey shall be deemed to be a journey in relation to which that paragraph applies but, in that case, that paragraph does not apply in relation to any later journey by the employee that ended or would have ended during that period.

(3.) Where—

- (a) an employee makes a journey in relation to which paragraph (b) of sub-section (1.) of this section does not apply by reason only that the journey commenced after the expiration of the prescribed period referred to in that paragraph;
- (b) the journey was made by the first means of transport—
 - (i) that was conveniently available for use by the employee;
 - (ii) that would ordinarily have enabled the employee to commence the journey after the time when he ceased work; and
 - (iii) that was of a kind that the employee could, having regard to all the circumstances of the case, have been reasonably expected to use; and
- (c) the employee did not make an earlier journey from his place of employment after the commencement of that period,

the first-mentioned journey shall be deemed to be a journey in relation to which that paragraph applies.

Journey to or from living accommodation or to or from place of employment within which living accommodation is situated.

34.—(1.) Subject to sub-sections (4.) and (5.) of this section and the next two succeeding sections, where an employee (other than an employee to whom either of the next two succeeding sub-sections applies) who is, as an incident of his employment and without charge to him, provided temporarily with living accommodation or receives an allowance in respect of his employment as compensation for temporarily providing his own living accommodation makes a journey to that living accommodation (other than a journey that is, for the purposes of sub-section (1.) of section 32 of this Act, a journey from his employment) or makes a journey from that living accommodation (other than a journey that is, for the purposes of sub-section (1.) of section 32 of this Act, a journey to his employment) during a period during which he is not required for work, then—

- (a) in the case of a journey to that living accommodation—if the journey ended or would have ended during the period that commenced at eight o'clock in the evening of the day immediately preceding the day when he was next required for work and ended at the time when he was next required for work (in this section called a “prescribed period”), the journey shall be deemed, for the purposes of sub-section (1.) of section 32 of this Act, to have been a journey to his employment by the Commonwealth; and

(b) in the case of a journey from that living accommodation—if the journey commenced during the period that commenced when he last ceased to be required for work and ended at nine o'clock in the morning of the day immediately following the day on which he last ceased to be required for work (in this section called a “prescribed period”), the journey shall be deemed, for the purposes of sub-section (1.) of section 32 of this Act, to have been a journey from his employment by the Commonwealth.

(2.) Subject to sub-sections (4.) and (5.) of this section and the next two succeeding sections, where an employee who is, as an incident of his employment, provided with living accommodation situated within his place of employment and by the terms of his employment is not, or may not be, at certain times at liberty to absent himself from his place of employment makes a journey to or from his place of employment during a period during which he is at liberty to absent himself from his place of employment (in this sub-section called “the period of liberty”), then—

(a) in the case of a journey to that place of employment—if the journey ended or would have ended during the period (in this section called a “prescribed period”) that commenced at eight o'clock in the evening of the day immediately preceding the day on which the period of liberty ended and ended at the expiration of the period of liberty, the journey shall be deemed, for the purposes of sub-section (1.) of section 32 of this Act, to have been a journey to his employment by the Commonwealth; and

(b) in the case of a journey from that place of employment—if the journey commenced during the period (in this section called a “prescribed period”) that commenced at the commencement of the period of liberty and ended at nine o'clock in the morning of the day immediately following the day on which the period of liberty commenced, the journey shall be deemed, for the purposes of sub-section (1.) of section 32 of this Act, to have been a journey from his employment by the Commonwealth.

(3.) Subject to sub-sections (4.) and (5.) of this section and the next two succeeding sections, where an employee who—

(a) is, as an incident of his employment, provided with living accommodation situated outside his place of employment; and

(b) by the terms of his employment—

(i) is required to reside at that living accommodation; and

(ii) is not, or may not be, at certain times at liberty to absent himself from that living accommodation,

makes a journey to that living accommodation (other than a journey that is, for the purposes of sub-section (1.) of section 32 of this Act, a journey from his employment) or makes a journey from that living accommodation (other than a journey that is, for the purposes of sub-section (1.) of section 32 of this Act, a journey to his employment) during a period

during which he is at liberty to absent himself from that living accommodation and from his employment (in this sub-section called “the period of liberty”), then—

- (c) in the case of a journey to that living accommodation—if the journey ended or would have ended during the period (in this section called a “prescribed period”) that commenced at eight o’clock in the evening of the day immediately preceding the day on which the period of liberty ended and ended at the expiration of the period of liberty, the journey shall be deemed, for the purposes of sub-section (1.) of section 32 of this Act, to have been a journey to his employment by the Commonwealth; and
- (d) in the case of a journey from that living accommodation—if the journey commenced during the period (in this section called a “prescribed period”) that commenced at the commencement of the period of liberty and ended at nine o’clock in the morning of the day immediately following the day on which the period of liberty commenced, the journey shall be deemed, for the purposes of sub-section (1.) of section 32 of this Act, to have been a journey from his employment by the Commonwealth.

(4.) Where—

- (a) an employee makes a journey in relation to which paragraph (a) of sub-section (1.), paragraph (a) of sub-section (2.) or paragraph (c) of sub-section (3.) of this section does not apply by reason only that the journey ended or would have ended before the commencement of the prescribed period referred to in that paragraph; and
- (b) the journey was made by the last means of transport—
 - (i) that was conveniently available for use by the employee;
 - (ii) that would ordinarily have enabled the employee to complete the journey before the commencement of that period; and
 - (iii) that was of a kind that the employee could, having regard to all the circumstances of the case, have been reasonably expected to use,

the journey shall be deemed to be a journey in relation to which that paragraph applies but, in that case, that paragraph does not apply in relation to any later journey by the employee that ended or would have ended during that period.

(5.) Where—

- (a) an employee makes a journey in relation to which paragraph (b) of sub-section (1.), paragraph (b) of sub-section (2.) or paragraph (d) of sub-section (3.) of this section does not apply by reason only that the journey commenced after the expiration of the prescribed period referred to in that paragraph;

- (b) the journey was made by the first means of transport—
 - (i) that was conveniently available for use by the employee;
 - (ii) that would ordinarily have enabled the employee to commence the journey after the expiration of that period; and
 - (iii) that was of a kind that the employee could, having regard to all the circumstances of the case, have been reasonably expected to use; and
 - (c) the employee did not make an earlier journey from his living accommodation or place of employment, as the case may be, after the commencement of that period,
- the first-mentioned journey shall be deemed to be a journey in relation to which that paragraph applies.

(6.) A reference in this section to living accommodation does not include a reference to separate living accommodation.

Certain journeys excluded from operation of sections 33 and 34.

35.—(1.) Where an employee has made two or more journeys each of which ended or would have ended during the one period that is a prescribed period referred to in paragraph (a) of sub-section (1.) of section 33 of this Act, or paragraph (a) of sub-section (1.), paragraph (a) of sub-section (2.) or paragraph (c) of sub-section (3.) of the last preceding section, that paragraph applies in relation only to the first of those journeys.

(2.) Where an employee has made two or more journeys each of which commenced during the one period that is a prescribed period referred to in paragraph (b) of sub-section (1.) of section 33 of this Act, or paragraph (b) of sub-section (1.), paragraph (b) of sub-section (2.) or paragraph (d) of sub-section (3.) of the last preceding section, that paragraph applies in relation only to the first of those journeys.

Provisions relating to journeys.

36.—(1.) For the purposes of the last three preceding sections—

- (a) a reference to a journey to a specified place is a reference to a journey ending at that place irrespective of the place at which the journey commenced;
- (b) a reference to a journey from a specified place is a reference to a journey commencing at that place irrespective of the place at which the journey was intended to end; and
- (c) a reference to work, in relation to an employee, includes a reference to the performance of any act constituting part of the employment of the employee.

(2.) Where a person makes a journey for the purpose of taking up employment with the Commonwealth, this Act applies in relation to that journey as if he had become an employee at the commencement of that journey.

(3.) Where a person who ceases to be an employee makes a journey upon the termination of his employment by the Commonwealth, this Act applies in relation to that journey as if he had not ceased to be an employee.

Compensation payable in respect of medical expenses, &c.

37.—(1.) Where an injury is caused to an employee, the Commonwealth is liable to pay, in respect of the cost of medical treatment obtained in relation to the injury, being treatment that it was reasonable in the circumstances for the employee to obtain, compensation of such amount as is appropriate to that medical treatment having regard to the charges customarily made for similar medical treatment in the place where that treatment is obtained.

(2.) For the purposes of the last preceding sub-section, the cost of medical treatment shall, in the case of medical treatment being the supply, replacement or repair of an artificial limb or other artificial substitute or of a medical, surgical or other similar aid or appliance, be deemed to include any fees and charges paid or payable by the employee to a legally qualified medical practitioner, a legally qualified dentist or other qualified person for a consultation, examination, prescription or other service reasonably rendered in connexion with the treatment.

(3.) Where an injury is caused to an employee, the Commonwealth is liable to pay compensation of such amount as is reasonable in respect of the cost, payable by the employee, of an alteration to a building occupied, or vehicle or article used, by him, or of obtaining any aid or appliance (other than an aid or appliance referred to in the last preceding sub-section) for use by him or of having such an aid or appliance repaired or replaced, being an alteration the making of which, or an aid or appliance the obtaining of which, was reasonably required as a result of the injury, but so that the total amount of compensation payable under this sub-section in respect of the one injury does not exceed One hundred and fifty dollars.

(4.) For the purposes of the last preceding sub-section, two or more injuries to an employee that are sustained at the same time shall be treated as one injury.

(5.) An amount of compensation payable by the Commonwealth under sub-section (1.) or sub-section (3.) of this section is payable—

- (a) to, or in accordance with the directions of, the employee;
- (b) if the employee dies before the compensation is paid without having paid the cost referred to in that sub-section and another person, not being the legal personal representative of the employee, has paid that cost—to that other person; or
- (c) if that cost has not been paid and the employee, or, if he has died, his legal personal representative, is unable, or refuses or fails, to make a claim under section 54 of this Act for the compensation—to the person to whom that cost is payable.

(6.) Where a person is liable to pay the cost of any medical treatment referred to in sub-section (1.) of this section or the cost of making an alteration or obtaining an aid or appliance referred to in sub-section (3.)

of this section or having such an aid or appliance repaired or replaced, any amount paid under the last preceding sub-section to the person to whom that cost is payable is, to the extent of the payment, a discharge of the liability of the first-mentioned person.

(7.) Where compensation in respect of the cost of medical treatment is payable by the Commonwealth under this section, the Commonwealth is liable to pay compensation to the employee of an amount equal to the amount of the expenditure reasonably incurred by the employee in making a necessary journey in connexion with the obtaining of that medical treatment or in remaining, for the purpose of obtaining that medical treatment, at a place to which he has made a journey for that purpose.

(8.) The matters to which the Commissioner is to have regard in deciding questions arising under the last preceding sub-section include—

- (a) the places at which appropriate medical treatment was available for the employee;
- (b) the means of transport available for the journey of the employee;
- (c) the route or routes by which the employee could have travelled; and
- (d) the accommodation available to the employee.

(9.) Where—

- (a) an injury is caused to an employee;
- (b) a person has reasonably incurred expenditure in connexion with the transportation of the employee, or, if he has died, of his body, from the place where the injury was sustained to a hospital or similar place, or to a morgue or mortuary; and
- (c) the employee, or, if he has died, his legal personal representative, is unable, or refuses or fails, to make a claim under section 54 of this Act for compensation in respect of that expenditure,

the Commonwealth is liable to pay compensation to the person who incurred the expenditure of an amount equal to the amount of that expenditure.

Provision of vocational training.

38.—(1.) Subject to this section, where an injury is caused to an employee, and total or partial incapacity for work of the employee results from the injury, the Commissioner may make arrangements with the Director-General of Social Services for the provision of vocational training for the employee in accordance with Part VIII. of the *Social Services Act 1947-1971*.

(2.) This section does not apply in relation to—

- (a) a person referred to in paragraph (a) of sub-section (1.) of section 135 of the *Social Services Act 1947-1971*; or

(b) a person who, if he were a person referred to in that paragraph, would not be eligible to receive vocational training under Part VIII. of that Act by reason of sub-section (2.) of section 135A of that Act.

(3.) Part VIII. of the *Social Services Act* 1947-1971 applies, so far as it is capable of application, in relation to a person who is receiving vocational training in pursuance of this section as if he were a person referred to in paragraph (a) of sub-section (1.) of section 135 of that Act but he is not entitled to receive a rehabilitation allowance under section 135D of that Act.

(4.) The cost of any vocational training provided under this section shall be paid by the Commonwealth.

(5.) Where an employee is receiving vocational training in pursuance of this section, compensation is not payable to him under section 45, 46, 47 or 50 of this Act but—

(a) if he is receiving full time training—compensation is payable to him of an amount per week equal to the amount per week of the compensation that would be payable to him under section 45 of this Act if the total incapacity referred to in sub-section (1.) of this section had continued throughout the period of the training; or

(b) if he is receiving part time training—compensation is payable to him of such amount per week as the Commissioner determines but the amount so determined shall not be less than the amount per week of the compensation that, apart from this sub-section but disregarding section 48 of this Act, would be payable to him under this Act and shall not be greater than the amount per week of the compensation that would be payable to him under the last preceding paragraph if he were receiving full time training.

Compensation payable in respect of certain losses.

39.—(1.) Subject to this section, where an injury to an employee results in a loss specified in the next succeeding sub-section, the compensation payable in respect of that injury is Thirteen thousand five hundred dollars, and that compensation is payable to the employee.

(2.) The losses referred to in the last preceding sub-section are as follows:—

(a) loss of, or total loss of sight of, both eyes; and

(b) loss of, or total loss of sight of, a useful eye, the other being blind or absent.

(3.) Subject to this section, where an injury to an employee, not being an injury resulting in a loss in relation to which sub-section (1.) of this section applies, results in a loss specified in the next succeeding sub-section, the compensation payable in respect of that injury is an amount equal to such percentage of Thirteen thousand five hundred dollars as is specified in the next succeeding sub-section in relation to that loss, and that compensation is payable to the employee.

(4.) The losses and percentages referred to in the last preceding sub-section are the losses and percentages set out in the following table:—

Nature of Loss	Percentage
Loss of, or total loss of sight of, an eye.....	40
Total loss of hearing.....	70
Total loss of power of speech.....	70
Loss of arm at or above elbow.....	80
Loss of arm below elbow, loss of hand or loss of thumb and four fingers of the one hand.....	70
Loss of thumb.....	30
Loss of forefinger.....	20
Loss of middle finger.....	16
Loss of ring finger.....	14
Loss of little finger.....	13
Total loss of movement of joint of thumb.....	14
Loss of distal phalanx or joint of thumb.....	16
Loss of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx or joint.....	14
Loss of two phalanges or joints of forefinger.....	12
Loss of two phalanges or joints of middle or ring finger.....	11
Loss of two phalanges or joints of little finger.....	10
Loss of distal phalanx or joint of forefinger.....	10
Loss of distal phalanx or joint of other finger.....	8
Loss of leg at or above knee.....	75
Loss of leg below knee.....	65
Loss of foot.....	60
Loss of great toe.....	20
Loss of any other toe.....	8
Loss of two phalanges or joints of any other toe.....	7
Loss of phalanx or joint of great toe.....	10
Loss of phalanx or joint of any other toe.....	6

(5.) If the one injury results in loss of, or total loss of sight of, one eye, and partial loss of sight of the other eye, by an employee, the last preceding sub-section has effect in relation to the first-mentioned eye as if the reference in that sub-section to forty per centum were a reference to fifty per centum.

(6.) The compensation payable under this Act in respect of an injury resulting in partial loss of sight of an eye by an employee is such percentage of the amount of compensation that would be payable under this section in respect of an injury resulting in total loss of sight of that eye as is the percentage by which the injury to the employee resulted in the sight of that eye immediately before the injury being reduced.

(7.) For the purposes of the application of the last preceding sub-section, if the injury resulting in partial loss of sight of an eye by an employee also resulted in loss of the other eye or total or partial loss of sight of the other eye, the amount of compensation that would be payable under this section in respect of an injury resulting in total loss of sight of the first-mentioned eye shall be taken to be Six thousand seven hundred and fifty dollars.

(8.) For the purposes of sub-sections (5.) and (7.) of this section, two or more injuries to an employee that are sustained at the same time shall be treated as one injury.

(9.) The compensation payable under this Act in respect of an injury resulting in partial loss of hearing by an employee is such percentage of the amount of compensation that would be payable under this section in respect of an injury resulting in total loss of hearing by the employee as is the percentage by which the injury resulted in the hearing of the employee immediately before the injury being reduced.

(10.) The compensation payable under this Act in respect of an injury resulting in an impairment of speech of an employee is such percentage of the amount of compensation that would be payable under this section in respect of an injury resulting in total loss of power of speech by the employee as is reasonable having regard to the extent to which the speech of the employee immediately before the injury was impaired by the injury.

(11.) The compensation payable under this Act in respect of an injury resulting in partial loss by an employee of the efficient use of a part of the body specified in sub-section (4.) of this section or of the efficient use of such a part of the body for the purposes of the employment of the employee immediately before the injury, not being a loss referred to in any of the last four preceding sub-sections, is such percentage of the amount of compensation that would be payable under sub-section (3.) of this section in respect of an injury resulting in the loss by the employee of that part of the body as is—

- (a) the percentage by which the injury resulted in the efficient use, immediately before the injury, of that part of the body being reduced; or
- (b) the percentage by which the injury resulted in the efficient use, immediately before the injury, of that part of the body for the purposes of the employment of the employee immediately before the injury being reduced,

whichever is the greater percentage.

(12.) A reference in this section to the loss by an employee of a specified part of the body shall be read as including a reference to—

- (a) the total loss of the efficient use of that part of the body; and
- (b) the total loss of the efficient use of that part of the body for the purposes of his employment immediately before the injury that resulted in the loss.

(13.) This section does not apply in relation to an injury resulting in a loss where that injury or another injury sustained at the same time results in the death of the employee.

(14.) An amount of compensation referred to in this section is not payable in respect of an injury so long as the employee is, or is likely to become, totally incapacitated for work where the incapacity for work results, or, if it occurs, will result, in whole or in part from that injury.

(15.) In this section, “loss” means a permanent loss.

Compensation payable in respect of loss of capacity to engage in sexual intercourse.

40.—(1.) The compensation payable under this Act in respect of an injury that results in the loss of the genitals or the total and permanent loss of the capacity to engage in sexual intercourse is Six thousand seven hundred and fifty dollars and is payable to the employee.

(2.) This section does not apply in relation to an injury where that injury or another injury sustained at the same time results in the death of the employee within three months after the date of that injury or those injuries.

Compensation payable in respect of facial disfigurement.

41.—(1.) The compensation payable under this Act in respect of an injury that results in severe and permanent facial disfigurement to an employee is such amount, not exceeding Six thousand seven hundred and fifty dollars, as is determined in accordance with this section, and that compensation is payable to the employee.

(2.) For the purposes of this section—

- (a) facial disfigurement shall not be taken to be severe where, if the employee underwent suitable medical treatment, the disfigurement would not be severe; and
- (b) facial disfigurement shall not be taken to be permanent where, if the employee underwent suitable medical treatment, the disfigurement would be removed.

(3.) Where a claim is made for compensation in respect of an injury that results in facial disfigurement to an employee, the Commissioner shall arrange for the constitution of a medical board to examine the employee.

(4.) A medical board for the purposes of this section shall be constituted in accordance with section 57 of this Act except that, where practicable, the medical referee nominated by the Commissioner, or if more than one medical referee is nominated by the Commissioner, at least one of those medical referees, shall be a specialist in plastic surgery.

(5.) If the employee refuses or fails to submit himself for examination by the medical board or in any way obstructs the examination, his right to compensation under this section and his right to institute or continue any proceedings under this Act in relation to compensation under this section are suspended until the examination takes place.

(6.) The members of the medical board shall, in accordance with the next succeeding sub-section, give to the Commissioner a certificate or certificates, as prescribed—

- (a) stating whether they are of the opinion that the injury resulted in severe and permanent facial disfigurement to the employee; and
- (b) if they are of that opinion—specifying the amount (not exceeding Six thousand seven hundred and fifty dollars) of the compensation that, in their opinion, should be paid in respect of that disfigurement.

(7.) Any two or more of the members of the medical board who are of the same opinion in relation to a matter referred to in paragraph (a) or paragraph (b) of the last preceding sub-section shall give a joint certificate in relation to that matter and any member of the medical board who is not of the same opinion as the other member or other members of the medical board in relation to such a matter shall give a separate certificate in relation to that matter.

(8.) Where a joint certificate is given by all the members of the medical board, the certificate is final and—

- (a) in the case of a certificate stating that, in the opinion of the members of the medical board, the injury did not result in severe and permanent facial disfigurement to the employee—the certificate is, for the purposes of this Act, conclusive evidence that the injury did not result in such a disfigurement; or
- (b) in the case of a certificate stating that, in the opinion of the members of the medical board, the injury resulted in severe and permanent facial disfigurement to the employee—
 - (i) the certificate is, for the purposes of this Act, conclusive evidence that the injury resulted in such a disfigurement; and
 - (ii) if the certificate specifies an amount as being, in the opinion of the members of the board, the amount of the compensation that should be paid in respect of that disfigurement—the compensation payable in respect of that disfigurement is the amount so specified.

(9.) If all the members of the medical board do not give a joint certificate stating whether, in their opinion, the injury resulted in severe and permanent facial disfigurement to the employee, the Commissioner, in determining whether the injury resulted in such a disfigurement, shall have regard to the opinions expressed in the certificates given by the members of the board.

(10.) If the Commissioner determines that the injury resulted in severe and permanent facial disfigurement to the employee but all the members of the medical board do not give a joint certificate specifying an amount as being, in their opinion, the amount of the compensation that should be paid in respect of that disfigurement, the Commissioner, in determining the amount of that compensation, shall have regard to the opinions (if any) expressed in the certificates given by the members of the board.

(11.) A document purporting to be a certificate referred to in this section shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

(12.) Sub-sections (3.) and (4.) of section 58 of this Act apply in relation to an examination required in pursuance of this section.

(13.) Compensation is not payable under this section in relation to an injury where that injury or another injury sustained at the same time results in the death of the employee within three months after the date of that injury or those injuries.

Compensation payable in respect of total loss of the sense of taste or smell.

42.—(1.) The compensation payable under this Act in respect of an injury that results in the total and permanent loss of the sense of taste is One thousand three hundred and fifty dollars, and that compensation is payable to the employee.

(2.) The compensation payable under this Act in respect of an injury that results in the total and permanent loss of the sense of smell is One thousand three hundred and fifty dollars, and that compensation is payable to the employee.

(3.) Where a claim is made for compensation in respect of an injury that results in loss of the sense of taste or smell, the Commissioner shall arrange for the constitution of a medical board in accordance with section 57 of this Act to examine the employee.

(4.) If the employee refuses or fails to submit himself for examination by the medical board or in any way obstructs the examination, his right to institute and continue proceedings under this Act in relation to compensation under this section are suspended until the examination takes place.

(5.) The members of the medical board shall, in accordance with the next succeeding sub-section, give to the Commissioner a certificate or certificates, as prescribed, stating whether they are of the opinion that the injury resulted in total and permanent loss of the sense of taste or smell by the employee.

(6.) Any two or more members of the medical board who are of the same opinion in relation to the question whether the injury resulted in total and permanent loss of the sense of taste or smell by the employee shall give a joint certificate setting out their opinion and any member of the medical board who is not of the same opinion as the other member or other members of the medical board in relation to that question shall give a separate certificate setting out his opinion.

(7.) Where a joint certificate is given by all the members of the medical board, the certificate is final and is, for the purposes of this Act, conclusive evidence of the matters stated in the certificate.

(8.) If all the members of the medical board do not give a joint certificate, the Commissioner, in determining whether the injury resulted in total and permanent loss of the sense of taste or smell by the employee, shall have regard to the opinions expressed in the certificates given by the members of the board.

(9.) A document purporting to be a certificate referred to in this section shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

(10.) Sub-sections (3.) and (4.) of section 58 of this Act apply in relation to an examination required in pursuance of this section.

(11.) Compensation is not payable under this section in relation to an injury where that injury or another injury sustained at the same time results in the death of the employee within three months after the date of that injury or those injuries.

Compensation payable in respect of injuries resulting in death.

43.—(1.) Where an injury to an employee results in the death of the employee, the succeeding provisions of this section have effect.

(2.) Subject to this section and to sections 37 and 44 of this Act, if the employee dies without leaving dependants, compensation is not payable in respect of the injury.

(3.) If the employee dies leaving dependants who were, at the date of the death of the employee, wholly dependent upon him, then—

- (a) subject to this section and to sections 37 and 44 of this Act, the compensation payable in respect of the injury is Thirteen thousand five hundred dollars; and
- (b) that compensation is payable to, or in accordance with the directions of, the Commissioner for the benefit of those dependants and of any dependants who were partly dependent upon the employee at that date.

(4.) If the employee dies without leaving dependants who were, at the date of the death of the employee, wholly dependent upon him but leaving dependants who were, at that date, partly dependent upon him, then—

- (a) subject to this section and to sections 37 and 44 of this Act, the compensation payable in respect of the injury is such amount, not exceeding Thirteen thousand five hundred dollars, as the Commissioner determines should be paid, taking into account any losses suffered by those dependants as a result of the cessation of the earnings of the employee; and
- (b) that compensation is payable to, or in accordance with the directions of, the Commissioner for the benefit of those dependants.

(5.) If—

- (a) a child in relation to whom this Act applies was, at the date of the injury or at the date of the death of the employee, wholly or mainly dependent upon the employee;
- (b) a child in relation to whom this Act applies, being a child of the employee, was born after the death of the employee; or
- (c) a child in relation to whom this Act applies would, if the employee had not died, have been wholly or mainly dependent upon the employee,

compensation at the rate of Five dollars a week is payable to, or in accordance with the directions of, the Commissioner for the benefit of that child from the date of the death of the employee or the date of the birth of the child, whichever is the later.

(6.) Compensation under the last preceding sub-section in relation to a child—

(a) is not payable in respect of—

- (i) any period during which the child is not a child in relation to whom this Act applies; and
- (ii) in the case of a child referred to in paragraph (c) of that sub-section—any period during which, if the employee had not died, the child would not have been wholly or mainly dependent upon the employee; and

(b) ceases to be payable if the child marries or dies.

(7.) Subject to the next succeeding sub-section, where—

(a) compensation under sub-section (5.) of this section ceases to be payable for the benefit of a child; and

(b) the total amount of compensation under that sub-section paid for the benefit of that child is less than Five hundred dollars,

there is payable to, or in accordance with the directions of, the Commissioner for the benefit of that child, or, if that child has died, there is payable to such person as the Commissioner directs, an amount of compensation equal to the difference between that total amount and Five hundred dollars.

(8.) Where—

(a) compensation under sub-section (5.) of this section ceases to be payable for the benefit of a child by reason of paragraph (a) of sub-section (6.) of this section;

(b) an amount of compensation has been paid under the last preceding sub-section by reason of the compensation under sub-section (5.) of this section so ceasing to be payable; and

(c) after the payment of that amount, further compensation becomes payable for **the benefit of that child under sub-section (5.) of this section,**

the amount paid under the last preceding sub-section shall be set off against the further compensation.

(9.) An amount of compensation paid or payable before the death of an employee under this Act—

(a) is not affected by sub-section (2.) of this section;

(b) shall not be deducted from the compensation payable under sub-section (3.) of this section; and

(c) shall not be taken into account in determining the compensation payable under sub-section (4.) of this section.

(10.) Where an amount of compensation is payable under this section for the benefit of two or more dependants of a deceased employee, the Commissioner shall determine the shares of those dependants in that amount as he thinks fit having regard to any losses suffered by those dependants as a result of the cessation of the earnings of the employee.

(11.) A reference in the preceding provisions of this section to a dependant of a deceased employee shall be read as a reference to a dependant by or on behalf of whom a claim for compensation is made.

(12.) Where claims for compensation under this section are made by or on behalf of two or more dependants of a deceased employee in respect of an injury that resulted in the death of the employee, the Commissioner shall make one determination in respect of those claims.

Compensation payable in respect of funeral expenses.

44.—(1.) Where an injury to an employee results in the death of the employee, the Commonwealth is liable to pay compensation, in respect of the cost of the funeral of the employee, to the person who paid the cost of the funeral, or, if the cost of the funeral has not been paid, to the person who carried out the funeral, of such amount, not exceeding Three hundred dollars, as is reasonable having regard to the charges customarily made for funerals in the place where the funeral was carried out and to any amount paid or payable in respect of the cost of the funeral under any other law of the Commonwealth.

(2.) Where a person is liable to pay the cost of the funeral of an employee, any amount paid under the last preceding sub-section to the person who carried out the funeral is, to the extent of the payment, a discharge of the liability of the first-mentioned person.

Compensation payable in respect of injuries resulting in total incapacity.

45.—(1.) Where an injury to an employee results in the employee being totally incapacitated for work, the succeeding provisions of this section have effect.

(2.) Subject to this section, compensation is payable to the employee, during the period of the incapacity, of an amount per week equal to—

(a) Thirty-five dollars plus any amount or amounts required to be added to that amount in accordance with the succeeding provisions of this section; or

(b) the average weekly earnings of the employee before the injury,

whichever is the less.

(3.) If there is a prescribed person who is, or there are prescribed persons who are, wholly or mainly dependent upon the employee, there shall be added to the amount specified in paragraph (a) of the last preceding sub-section the amount of Eight dollars fifty cents.

(4.) If there is a child in relation to whom this Act applies (whether born before, on or after the date of the injury) who is wholly or mainly

dependent upon the employee or there are children in relation to whom this Act applies (whether born before, on or after the date of the injury) who are wholly or mainly dependent upon the employee, there shall be added to the amount specified in paragraph (a) of sub-section (2.) of this section the amount of Five dollars for that child or each of those children, but an amount shall not be so added for a child in relation to any time before the date of the birth of that child.

(5.) If a child in relation to whom this Act applies is the only person who is a prescribed person in relation to the employee, the last preceding sub-section does not apply in relation to that child.

(6.) If there are two or more persons who are prescribed persons in relation to the employee and are wholly or mainly dependent upon the employee and each of those persons is a child in relation to whom this Act applies, sub-section (4.) of this section does not apply in relation to one of those persons.

(7.) If the employee—

(a) is retired from his employment as a result of the incapacity for work; and

(b) as a result of the retirement is in receipt of a pension under the *Superannuation Act 1922-1971* or the *Defence Forces Retirement Benefits Act 1948-1971* or a pension under a superannuation scheme established or maintained by a prescribed authority of the Commonwealth,

the compensation payable to the employee in respect of each week during the period of the incapacity shall not exceed the amount, if any, by which the average weekly earnings of the employee before the injury exceed the part of the pension paid or payable to the employee in respect of that week that is not attributable to contributions for the pension paid by the employee.

(8.) Where—

(a) as a result of the injury, the employee is being maintained as a patient in a hospital, nursing home or similar place and has been so maintained for a continuous period of not less than one year; and

(b) there are no prescribed persons, and no children in relation to whom this Act applies, who are dependent upon the employee,

the compensation payable to the employee is such amount per week as is determined by the Commissioner, having regard to the present and probable future needs and expenses of the employee and the duration of the period during which the employee is likely to be a patient in a hospital, nursing home or similar place, but the amount so determined shall not be less than one-half of, and shall not be greater than, the amount per week of the compensation that, but for this sub-section, would be payable to the employee.

(9.) Subject to sections 47 and 50 of this Act, where a determination is made that an amount of compensation is payable to the employee under section 39 of this Act in respect of an injury that resulted in a loss referred to in that section or a determination is made that the liability of the Commonwealth to make further payments to the employee under section 46 of this Act in respect of an injury is to be redeemed, compensation is not payable to the employee under this section in respect of a period of incapacity for work resulting from that injury, being a period occurring after the date of the making of the determination.

(10.) For the purposes of this section, “prescribed person”, in relation to an employee, means—

(a) the spouse of the employee;

(b) any of the following persons, being a person over the age of sixteen years:—

(i) the father, mother, step-father, step-mother, mother-in-law, grandfather, grandmother, son, daughter, step-son, stepdaughter, grandson, granddaughter, brother, sister, half-brother or half-sister of the employee;

(ii) a person who stands *in loco parentis* to the employee; or

(iii) a person, not being the spouse of the employee or a person referred to in either of the last two preceding sub-paragraphs, who is wholly or mainly maintained by the employee and has the care of a child in relation to whom this Act applies being a child who is wholly or mainly dependent on the employee; or

(c) in the case of a male employee, a woman who, throughout a period of three years ending on or after the date of commencement of the incapacity of the employee, although not legally married to him, lived with him as his wife on a permanent and *bona fide* domestic basis.

(11.) For the purposes of sub-paragraph (i) of paragraph (b) of the last preceding sub-section, relationships referred to in that sub-paragraph shall be taken to include illegitimate relationships and relationships by adoption and relationships that are traced through illegitimate relationships or relationships by adoption.

(12.) For the purposes of sub-paragraph (iii) of paragraph (b) of sub-section (10.) of this section, a person who has the care of a child referred to in that sub-paragraph shall not be taken not to be wholly or mainly maintained by an employee by reason only that the employee pays any remuneration to the person for caring for that child.

Compensation payable in respect of injuries resulting in partial incapacity.

46.—(1.) Where an injury to an employee results in the employee being partially incapacitated for work, the succeeding provisions of this section have effect.

(2.) Subject to this section, compensation is payable to the employee, during the period of the incapacity, of an amount per week equal to—

(a) the lesser of the following amounts, namely—

(i) Thirty-five dollars; or

(ii) the amount (if any) by which the average weekly earnings of the employee before the injury exceeds from time to time the amount per week that he is able to earn in some suitable employment or business; or

(b) the amount (if any) by which the amount per week that would be payable to him under the last preceding section, disregarding sub-section (7.) of that section, if he were totally incapacitated for work exceeds from time to time the amount per week that he is able to earn in some suitable employment or business,

whichever is the greater.

(3.) If the employee—

(a) is retired from his employment as a result of the partial incapacity for work; and

(b) as a result of the retirement is in receipt of a pension under the *Superannuation Act 1922-1971* or the *Defence Forces Retirement Benefits Act 1948-1971* or a pension under a superannuation scheme established or maintained by a prescribed authority of the Commonwealth,

the compensation payable to the employee in respect of each week during the period of the incapacity shall not exceed the amount, if any, by which the average weekly earnings of the employee before the injury exceed from time to time the sum of—

(c) the amount per week that he is able to earn in some suitable employment or business; and

(d) the part of the pension paid or payable to the employee in respect of that week that is not attributable to contributions for the pension paid by the employee.

(4.) In ascertaining for the purposes of the last two preceding sub-sections the amount per week that an employee is able to earn, any amount that he is able to earn in respect of overtime shall be taken into account.

(5.) Subject to the next succeeding section, where a determination is made that an amount of compensation is payable to the employee under section 39 of this Act in respect of an injury that caused a loss referred to in that section or a determination is made that the liability of the Commonwealth to make further payments to the employee under this section in respect of an injury is to be redeemed, compensation is not payable to the employee under this section in respect of a period of incapacity for work resulting from that injury, being a period occurring after the date of the making of the determination.

Incapacity while undergoing, or as a result of, medical treatment.

47. If, after the making of a determination that an amount of compensation is payable to an employee under section 39 of this Act in respect of an injury resulting in a loss referred to in that section, the employee undergoes medical treatment in relation to that injury, being medical treatment in relation to which sub-section (1.) of section 37 of this Act applies—

- (a) any incapacity of the employee for work resulting from that medical treatment or occurring by reason that the employee is undergoing that medical treatment shall, for the purposes of this Act, be deemed to have resulted from that injury; and
- (b) compensation is payable to the employee in respect of that incapacity in accordance with section 45 or section 46 of this Act, as the case may be, but sub-section (9.) of section 45 or sub-section (5.) of section 46 of this Act, as the case may be, does not apply in relation to the period of that incapacity.

Additional compensation payable where employee requires the constant help of another person.

48.—(1.) Where as a result of an injury to an employee the employee reasonably requires the constant help or attendance of another person, compensation is payable to the employee, during any period when he requires that help or attendance, at the rate of Eight dollars per week.

(2.) Compensation is not payable under the last preceding sub-section in respect of any period when the employee is being maintained as a patient in a hospital, nursing home or similar place, or is receiving constant nursing attention, and the cost of his maintenance in that hospital, nursing home or other place or the cost of that nursing attention, as the case may be, is being borne wholly by the Commonwealth.

Redemption of compensation payable in respect of partial incapacity.

49.—(1.) Subject to this section, where payments of compensation in respect of an injury have been made to an employee under section 46 of this Act for a continuous period of not less than six months, the employee may request the Commissioner in writing that the liability of the Commonwealth to make further payments to the employee under that section be redeemed by the payment to the employee of a lump sum.

(2.) A request under the last preceding sub-section shall be in writing and shall specify the manner in which the employee intends to use the lump sum if the request is granted.

(3.) Where a request is made under sub-section (1.) of this section, the Commissioner shall, unless the employee has, by notice in writing to the Commissioner, withdrawn the request, determine—

- (a) whether the liability of the Commonwealth is to be redeemed by the payment to the employee of a lump sum; and
- (b) if he determines that the liability is to be so redeemed—the amount of the lump sum.

(4.) The amount of the lump sum is the amount determined to be the value, as at the date of the determination by the Commissioner that the liability is to be redeemed, of the right of the employee to receive further

payments of compensation under section 46 of this Act and, in the determination of the value of that right, regard shall be had to the nature of the injury to the employee, the age and occupation of the employee and any other relevant matters.

(5.) The Commissioner shall not make a determination that the liability of the Commonwealth to make further payments to an employee under section 46 of this Act is to be redeemed unless he is satisfied that—

- (a) the injury is not likely to result in the employee becoming totally incapacitated for work;
- (b) the employee intends to use the lump sum in a manner that is particularly advantageous to the employee; and
- (c) in all the circumstances it is desirable in the interests of the employee that the liability of the Commonwealth be redeemed.

(6.) Where—

- (a) the Commissioner has made, in pursuance of a request under sub-section (1.) of this section, a determination that the liability of the Commonwealth to make further payments to an employee under section 46 of this Act is to be redeemed by the payment to the employee of a lump sum;
- (b) the employee has not instituted a proceeding under Part V. in respect of the determination or, if he has instituted such a proceeding, has discontinued the proceeding; and
- (c) the lump sum has not been paid to the employee in pursuance of the determination,

the employee may notify the Commissioner in writing that he no longer wishes the liability to be redeemed and, in that case, the determination shall be deemed not to have been made and a further determination shall not be made in respect of that request.

Recurrent payments after payment of lump sum.

50.—(1.) Where—

- (a) an injury in respect of which a lump sum was paid to an employee in pursuance of section 39 or section 49 of this Act results in the employee, at any time after the payment of that lump sum, being totally incapacitated for work; and
- (b) the incapacity is likely to continue indefinitely,

compensation is payable to the employee in accordance with this section during the period of the total incapacity.

(2.) The compensation is—

- (a) an amount per week equal to the amount per week that would be payable to the employee in pursuance of this Act during the period of that incapacity if the lump sum had not been paid, less

an amount (if any) ascertained in accordance with the formula

$$\frac{a - b}{52c}, \text{ where—}$$

a is the lump sum that was paid to the employee;

b is the sum of the amounts that would, but for the payment to the employee of that lump sum, have been paid to the employee under section 46 of this Act in respect of the period that commenced on the date on which the Commissioner determined that the lump sum was to be paid to the employee and ends on the date on which compensation became payable to him under this section; and

c is the number of years in the complete expectation of life of the employee at the date on which compensation became payable to him under this section, as ascertained by reference to the prescribed Life Tables; or

(*b*) an amount per week that is prescribed for the purposes of this section in respect of a class of persons in which the employee is included, whichever is the greater.

Cancelled determinations not to affect certain payments of compensation.

51.—(1.) For the purposes of sub-section (9.) of section 45, sub-section (5.) of section 46 and sub-section (2.) of section 50 of this Act, account shall not be taken of a determination that an amount of compensation is payable to an employee under section 39 of this Act in respect of an injury that resulted in a loss referred to in that last-mentioned section if—

(*a*) the determination has been revoked by the Commissioner; or

(*b*) the determination has been set aside by a Compensation Tribunal or a Court.

(2.) Paragraph (*b*) of the last preceding sub-section does not apply if a further determination has been made by the Tribunal or Court referred to in that paragraph, being a determination by virtue of which an amount of compensation is payable to the employee under section 39 of this Act in respect of the injury that resulted in the loss.

(3.) For the purposes of sub-section (9.) of section 45, sub-section (5.) of section 46 and sub-section (2.) of section 50 of this Act, account shall not be taken of a determination that the liability of the Commonwealth to make further payments to an employee under section 46 of this Act is to be redeemed if—

(*a*) the determination has been revoked by the Commissioner; or

(*b*) the determination has been set aside by a Compensation Tribunal or a Court.

(4.) Paragraph (*b*) of the last preceding sub-section does not apply if a further determination has been made by the Tribunal or Court referred to in that paragraph, being a determination by virtue of which the liability of the Commonwealth to make further payments to the employee under section 46 of this Act is to be redeemed.

Reduction of compensation in certain cases.

52.—(1.) Where, in relation to a day in respect of which compensation is payable to an employee in accordance with section 45 or section 50 of this Act, an amount is, or amounts are, paid or payable to the employee by the Commonwealth by way of salary, wages or pay, the compensation payable to the employee under that section in respect of that day is, subject to the next succeeding sub-section and to sub-section (4.) of this section, the amount (if any) by which the compensation that, but for this sub-section, would be payable to the employee in respect of that day exceeds the amount, or the sum of the amounts, as the case may be, so paid or payable to the employee by way of salary, wages or pay in respect of that day.

(2.) For the purposes of the last preceding sub-section, the amount of the compensation payable to an employee under section 45 or section 50 of this Act in respect of a day shall be taken to be—

(a) in the case of an employee being a member of the Defence Force—one-seventh of the amount per week of the compensation payable to the employee under that section; and

(b) in any other case—the amount (if any) ascertained in accordance with the formula $\frac{ab}{c}$,

where—

a is the number of hours that, but for his incapacity for work, the employee would have been required to work on that day or, if that day would not have been an ordinary working day for the employee, the number of hours that, but for that incapacity, the employee would have been required to work on that day if that day had been such an ordinary working day;

b is the amount per week of the compensation payable to the employee under that section; and

c is the number of hours that, but for his incapacity for work, the employee would have been required to work during the period of seven days commencing on a Sunday in which that day occurs or, if that period would not have been an ordinary working period for the employee, the number of hours that, but for that incapacity, the employee would have been required to work during that period if that period had been such an ordinary working period.

(3.) Where, in relation to any period in respect of which compensation is payable to an employee in accordance with section 45, 46, 47 or 50 of this Act, an amount is, or amounts are, paid or payable to the employee by the Commonwealth (not being an amount or amounts by way of salary, wages or pay) by reason of the injury in respect of which the compensation is payable or by reason of any incapacity resulting from that injury, the compensation payable to the employee under that section in respect of that period is, subject to the next succeeding sub-section, such amount per week as is determined by the Commissioner, having regard to the circumstances giving rise to the payment of, or the liability of the Commonwealth

to pay, that amount or those amounts, but the amount so determined shall not exceed the amount per week of the compensation that, but for this sub-section, would be payable to the employee under that section in respect of that period.

(4.) A reference in a preceding provision of this section to an amount paid or payable to an employee by the Commonwealth does not include a reference to—

- (a) an amount by way of pay in respect of a period of leave of absence granted, or in lieu of the grant of a period of leave of absence, under section 73 or section 74 of the *Public Service Act 1922-1968* or under section 7 or section 8 of the *Commonwealth Employees' Furlough Act 1943-1968*;
- (b) an amount by way of pay in respect of a period of a like leave of absence granted, or in lieu of the grant of a period of a like leave of absence, under regulations in force under the *Naval Defence Act 1910-1971*, the *Defence Act 1903-1970* or the *Air Force Act 1923-1965*;
- (c) an amount paid or payable in respect of sick leave;
- (d) an amount paid or payable under the *Superannuation Act 1922-1971* or the *Defence Forces Retirement Benefits Act 1948-1971* or under a superannuation or provident scheme established or maintained by a prescribed authority of the Commonwealth;
- (e) an amount of deferred pay within the meaning of Part III. of the *Defence Forces Retirement Benefits Act 1959-1968* or of any provision of that Part;
- (f) an amount of child endowment under Part VI. of the *Social Services Act 1947-1971*;
- (g) an amount of pension or allowance in respect of a child in relation to whom this Act applies who, at the date when the amount was paid or became payable, as the case may be, was dependent upon the employee; or
- (h) an amount paid or payable under this Act.

(5.) Where—

- (a) an employee is absent from his employment during any period by reason of illness;
- (b) the employee is entitled to compensation in accordance with section 45, 47 or 50 of this Act in respect of that period; and
- (c) an amount is, or amounts are, payable to the employee by the Commonwealth in respect of sick leave in respect of that period,

the amount, or the sum of the amounts, payable to the employee by the Commonwealth in respect of sick leave in respect of that period shall not be greater than the amount (if any) by which the amount, or the sum of the amounts, that, if he were not so entitled to compensation in respect

of that period, would have been payable to him by the Commonwealth in respect of sick leave in respect of that period exceeds the amount, or the sum of the amounts, of the compensation to which he is so entitled in respect of that period.

(6.) Where—

- (a) an employee is absent from his employment during any period by reason of illness;
- (b) the employee is entitled to compensation in accordance with section 45, 47 or 50 of this Act in respect of that period; and
- (c) if the employee were not so entitled to compensation in respect of that period, he would be entitled under a law, award, determination, industrial agreement or contract of employment to payment by the Commonwealth of an amount or amounts in respect of sick leave in respect of that period,

then, subject to the next succeeding sub-section, the employee is entitled to payment of that amount or those amounts notwithstanding that he is also entitled to compensation in respect of that period.

(7.) An employee is not, by virtue of the last preceding sub-section, entitled in respect of any period to payment in respect of sick leave of an amount that is, or amounts the sum of which is, greater than the amount (if any) by which the amount, or the sum of the amounts, that, but for this sub-section, would have been payable to him by the Commonwealth in respect of sick leave in respect of that period exceeds the amount, or the sum of the amounts, of the compensation to which he is entitled in accordance with section 45, 47 or 50 of this Act in respect of that period.

(8.) Where the amount of a payment made to an employee by the Commonwealth in respect of sick leave is, by virtue of sub-section (5.) or (7.) of this section, less than the amount that, apart from that sub-section, would have been the amount of that payment, then the period for which the employee is entitled under any law, award, determination, industrial agreement or contract of employment to receive similar payments in respect of future absences from his employment by reason of illness shall, by reason of the first-mentioned payment, be reduced by so much only of the period by which it would have been reduced if he were not entitled to compensation as bears to that last-mentioned period the same proportion as the first-mentioned amount bears to the second-mentioned amount.

(9.) In this section, a reference to a payment in respect of sick leave or to an amount paid or payable in respect of sick leave, in relation to an employee, is a reference to a payment to the employee by way of salary, wages or pay, or to an amount paid or payable to the employee by way of salary, wages or pay, as the case may be, in respect of a period during which the employee was absent from his employment by reason of illness.

(10.) In this section, a reference to salary, wages or pay of an employee shall be read as including a reference to any allowance payable to the employee in respect of his employment.

PART IV.—MAKING AND DETERMINATION OF CLAIMS.

Notice to Commonwealth of injury, disease or loss of or damage to property.

53.—(1.) This Act does not apply in relation to an injury caused to an employee unless notice in writing of the injury was served, as prescribed, on the Commonwealth—

(a) as soon as practicable after the occurrence of the injury;

(b) if *the* employee was not, immediately after the injury, aware that he had sustained an injury—as soon as practicable after he became so aware; or

(c) if the employee died without having become so aware or before it was practicable to serve such a notice—as soon as practicable after his death.

(2.) This Act does not apply in relation to a disease contracted, or an aggravation, acceleration or recurrence of a disease suffered, by an employee unless notice in writing of the contraction of the disease, of the commencement of the aggravation or acceleration of the disease or of the recurrence of the disease, as the case may be, was served, as prescribed, on the Commonwealth—

(a) as soon as practicable after the employee became aware of the contraction of the disease, of the commencement of the aggravation or acceleration of the disease or of the recurrence of the disease; or

(b) if the employee died without having become so aware or before it was practicable to serve such a notice—as soon as practicable after his death.

(3.) This Act does not apply in relation to loss of, or damage to, an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by an employee, being a loss or damage that arose in circumstances referred to in section 28 of this Act, unless notice in writing of the accident that resulted in the loss or damage was served, as prescribed, on the Commonwealth—

(a) as soon as practicable after the occurrence of the accident;

(b) if the employee was not, immediately after the accident, aware that the accident had resulted in the loss or damage—as soon as practicable after he became so aware; or

(c) if the employee died without having become so aware or before it was practicable to serve such a notice—as soon as practicable after his death.

(4.) Where—

- (a) a notice purporting to be a notice referred to in a preceding sub-section of this section has been served on the Commonwealth;
- (b) the notice, as regards the time of service or otherwise, failed to comply with the requirements of that sub-section; and
- (c) the Commonwealth would not, by reason of the failure, be prejudiced if the notice were treated as a sufficient notice, or the failure resulted from the death, or absence from Australia, of a person, from ignorance, from a mistake or from any other reasonable cause,

the notice shall be deemed to have been served in accordance with that sub-section.

Time for making claims for compensation.

54.—(1.) Compensation in relation to an employee is not payable under this Act to a person unless a claim in writing for the compensation was served, as prescribed, on the Commissioner by or on behalf of the person within the prescribed period.

(2.) If the claimant is the employee, the prescribed period for the purposes of the last preceding sub-section is—

- (a) in the case of a claim in relation to an injury to the claimant—
 - (i) the period of six months commencing on the day of the injury; or
 - (ii) if the claimant was not, immediately after the injury, aware that he had sustained an injury—the period of six months commencing on the day on which he became so aware;
- (b) in the case of a claim in relation to a disease contracted, or an aggravation, acceleration or recurrence of a disease suffered, by the claimant—the period of six months commencing on the day on which the claimant became aware of the contraction of the disease, of the commencement of the aggravation or acceleration of the disease or of the recurrence of the disease; or
- (c) in the case of a claim in relation to loss of, or damage to, an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by the claimant, being a loss or damage that arose in circumstances referred to in section 28 of this Act—
 - (i) the period of six months commencing on the day of the occurrence of the accident that resulted in the loss or damage; or
 - (ii) if the claimant was not, immediately after the accident, aware that the accident had resulted in the loss or damage—the period of six months commencing on the day on which he became so aware.

(3.) If the employee has died and the claimant is his legal personal representative making a claim in pursuance of sub-section (1.) of section 55 of this Act, the prescribed period for the purposes of sub-section (1.) of this section is—

(a) in the case of a claim in relation to an injury to the employee—

(i) the period of six months commencing on the day of the injury; or

(ii) if the employee did not become aware before his death that he had sustained an injury—the period of six months commencing on the day on which the claimant became aware of the death of the employee;

(b) in the case of a claim in relation to a disease contracted, or an aggravation, acceleration or recurrence of a disease suffered, by the employee—

(i) the period of six months commencing on the day on which the employee became aware of the contraction of the disease, of the commencement of the aggravation or acceleration of the disease or of the recurrence of the disease; or

(ii) if the employee did not become aware before his death that he had contracted a disease or suffered an aggravation, acceleration or recurrence of a disease—the period of six months commencing on the day on which the claimant became aware of the death of the employee; or

(c) in the case of a claim in relation to loss of, or damage to, an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by the employee, being a loss or damage that arose in circumstances referred to in section 28 of this Act—

(i) the period of six months commencing on the day of the occurrence of the accident that resulted in the loss or damage; or

(ii) if the employee did not become aware before his death that the accident had resulted in the loss or damage—the period of six months commencing on the day on which the claimant became aware of the death of the employee.

(4.) If the employee has died and the claimant is a dependant of the deceased employee claiming compensation in respect of his death, the prescribed period for the purposes of sub-section (1.) of this section is the period of six months commencing on the day on which the claimant became aware of the death of the employee.

(5.) If the claimant is a person to whom the compensation is payable by virtue of paragraph (b) or paragraph (c) of sub-section (5.), or sub-section (9.), of section 37, or by virtue of section 44, of this Act, the prescribed period for the purposes of sub-section (1.) of this section is

the period of six months commencing on the day on which the liability to pay the cost to which the claim relates arose, or on which the expenditure to which the claim relates was incurred, as the case may be.

(6.) Where—

- (a) a claim purporting to be a claim referred to in sub-section (1.) of this section has been served on the Commissioner;
- (b) the claim, as regards the time or manner of service, failed to comply with the requirements of that sub-section; and
- (c) the Commonwealth would not, by reason of the failure, be prejudiced if the claim were treated as a sufficient claim, or the failure resulted from the death, or absence from Australia, of a person, from ignorance, from a mistake or from any other reasonable cause,

the claim shall be deemed to have been served in accordance with that sub-section.

Survival of claims.

55.—(1.) Where a person who is entitled to make a claim for compensation under this Act dies, that claim may be made by his legal personal representative.

(2.) A claim for compensation under this Act is not affected by the death of the claimant after the claim was served on the Commissioner.

(3.) A reference in this Act to a claimant shall—

- (a) in the case of a claim referred to in sub-section (1.) of this section—be read as a reference to the legal personal representative who made the claim; and
- (b) in the case of a claim referred to in the last preceding sub-section—be read, in relation to any time after the death of the person who made the claim, as a reference to the legal personal representative of that person.

(4.) Section 117 of this Act applies in relation to any amount payable under a determination made in respect of a claim referred to in this section as if the deceased person had died after the determination was made.

Medical referees.

56. The Governor-General may appoint legally qualified medical practitioners to be medical referees for the purposes of this Act.

Medical boards.

57.—(1.) Subject to this section and to sub-section (4.) of section 41 of this Act, a medical board constituted for the purposes of this Act shall consist of a medical referee or medical referees nominated by the Commissioner and—

- (a) if the Commissioner nominates one medical referee only—a legally qualified medical practitioner nominated by the employee; or

(b) if the Commissioner nominates more than one medical referee—a number of legally qualified medical practitioners, nominated by the employee, equal to the number of medical referees nominated by the Commissioner.

(2.) A medical practitioner who has, in connexion with an injury to an employee, been engaged as a medical practitioner by or on behalf of the Commissioner, the Commonwealth, the employee or any insurer interested in the outcome of a claim by the employee for compensation in respect of that injury is not eligible to be nominated by the Commissioner or the employee as a member of a medical board constituted to examine the employee in connexion with that injury.

(3.) If the employee is unable, or refuses or fails, within the prescribed period, to nominate an eligible medical practitioner or a sufficient number of eligible medical practitioners in accordance with sub-section (1.) of this section or the medical practitioner or any of the medical practitioners nominated by the employee refuses or fails to perform his functions as a member of the board, the Commissioner may exercise the power of nomination conferred by that sub-section on the employee to the extent to which that power has not been exercised by the employee or for the purpose of substituting another eligible medical practitioner or other eligible medical practitioners for the medical practitioner or medical practitioners who refused or failed to perform functions as a member of the board.

Power of Commissioner to require medical examination.

58.—(1.) Where—

(a) a notice has been served on the Commonwealth under section 53 of this Act in relation to an employee; or

(b) an employee has made a claim for compensation under this Act,

the Commissioner may require the employee to submit himself for an examination or examinations by a medical referee, or other legally qualified medical practitioner, nominated by the Commissioner or by a medical board to be constituted in accordance with this Act.

(2.) Where an employee refuses or fails to submit himself to an examination in accordance with a requirement under the last preceding sub-section or in any way obstructs such an examination, his right to compensation under this Act and his right to institute or continue any proceedings under this Act in relation to compensation are suspended until the examination takes place.

(3.) The Commonwealth shall pay the cost of conducting any examination required in pursuance of this section and is liable to pay to the employee an amount equal to the amount of the expenditure reasonably incurred by the employee in making a necessary journey in connexion with the examination or in remaining, for the purpose of the examination, at a place to which he has made a journey for that purpose.

(4.) The matters to which the Commissioner is to have regard in deciding questions arising under the last preceding sub-section include—

- (a) the means of transport available for the journey of the employee;
- (b) the route or routes by which the employee could have travelled; and
- (c) the accommodation available to the employee.

(5.) Where an employee's right to compensation is suspended under sub-section (2.) of this section, compensation is not payable in respect of the period of the suspension.

(6.) An employee shall not be required to submit himself for examinations under this section at more frequent intervals than are prescribed.

Certificates.

59.—(1.) Where an examination is carried out under the last preceding section by a medical referee or other medical practitioner, or by a medical board, the medical referee, medical practitioner or members of the medical board shall, subject to the next succeeding sub-section, give to the Commissioner a certificate or certificates, as prescribed, in relation to the physical and mental condition of the employee and the physical and mental capability of the employee to engage in employment, specifying, where necessary, the kind of employment in which he is capable of engaging and any other information that the Commissioner requires.

(2.) Any two or more members of a medical board who are in agreement in relation to any matter to be stated in the certificates to be given by them under the last preceding sub-section in relation to an employee shall give a joint certificate in relation to that matter and any member of a medical board who is not in agreement with the other member or the other members of the medical board in relation to such a matter shall give a separate certificate in relation to that matter.

(3.) A joint certificate given by all the members of a medical board under this section is final and is conclusive evidence, for the purposes of this Act, of the matters stated in the certificate.

(4.) A document purporting to be a certificate referred to in this section shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

Power of Commonwealth to require medical examination.

60.—(1.) Where—

- (a) the Commissioner makes a determination under this Act that the Commonwealth is liable to pay compensation to an employee in respect of a claim or part of a claim; or
- (b) an employee institutes a proceeding under Part V. in respect of a determination by the Commissioner under this Act,

the Commonwealth may require the employee to submit himself for an examination or examinations by one or more legally qualified medical practitioners nominated by the Commonwealth.

(2.) Where an employee refuses or fails to submit himself for examination in accordance with a requirement under the last preceding sub-section or in any way obstructs such an examination, his right to compensation under this Act and his right to institute or continue any proceedings under this Act in relation to compensation are suspended until the examination takes place.

(3.) Sub-sections (3.) and (4.) of section 58 of this Act apply in relation to an examination required in pursuance of this section.

(4.) Where an employee's right to compensation is suspended under sub-section (2.) of this section, compensation is not payable in respect of the period of the suspension.

(5.) An employee shall not be required to submit himself for examinations under this section at more frequent intervals than are prescribed.

Service of copies of determinations and other documents by Commissioner.

61.—(1.) Where the Commissioner makes a determination under this Act, he shall cause to be served on the Commonwealth and on the claimant or, if there is more than one claimant whose claim was dealt with by the determination, on each of the claimants—

(a) a copy of the determination;

(b) if the reasons for the determination are not set out in the determination—a notice informing the person served that, if that person is dissatisfied with the determination, he is entitled to request the Commissioner to furnish to him a statement setting out the reasons for the determination; and

(c) a notice informing the person served that that person is entitled, in accordance with Part V., to request that a matter or question to which the determination relates be referred to a Commonwealth Employees' Compensation Tribunal for reconsideration or to apply to a prescribed Court for a judicial review of the determination.

(2.) The Commissioner shall also cause to be served on the claimant, or on each of the claimants, as the case may be, a notice stating that, if the claimant is dissatisfied with the determination, the Commissioner will, on request by him, furnish to him a copy of—

(a) the claim for compensation and any other document furnished to the Commissioner by or on behalf of the claimant in connexion with a matter or question to which the determination relates;

(b) any certificate given to the Commissioner under section 41, 42 or 59 of this Act in connexion with such a matter or question; and

(c) any document furnished to the Commissioner on behalf of the Commonwealth in connexion with such a matter or question.

(3.) On receipt of a request by a person in pursuance of a notice referred to in paragraph (b) of sub-section (1.) of this section, the Commissioner shall forthwith serve a statement setting out the reasons for the

determination on the person by whom the request was made and on every other person affected by the determination.

(4.) On receipt of a request by a claimant in pursuance of a notice referred to in sub-section (2.) of this section for a copy of a document referred to in that sub-section that has not previously been furnished by the Commissioner to the claimant, the Commissioner shall forthwith comply with the request.

(5.) The Commissioner shall, if the Commonwealth so requests, also cause to be served on the Commonwealth a copy of each of the documents referred to in sub-section (2.) of this section.

(6.) For the purposes of the application of this section in relation to a determination in respect of a request under section 49 of this Act—

(a) a reference to the claim for compensation shall be read as a reference to the request under that section; and

(b) a reference to the claimant shall be read as a reference to the person who made the request.

PART V—REFERENCES TO COMPENSATION TRIBUNALS AND APPLICATIONS TO PRESCRIBED COURTS.

Division 1.—Preliminary.

Interpretation.

62.—(1.) In this Part, unless the contrary intention appears, a reference to a party to a determination shall be read as a reference to the Commonwealth or to the claimant or, if there is more than one claimant whose claim was dealt with by the determination, to any of those claimants.

(2.) This Part has effect in relation to a determination made in respect of a request under section 49 of this Act as if the person who made the request were a claimant and the request were a claim.

References and applications to Tribunal or Court.

63.—(1.) Subject to this Part, where a determination is made under this Act, a party to the determination may either—

(a) request the Commissioner in accordance with Division 3 of this Part to refer all or any of the matters or questions to which the determination relates to a Compensation Tribunal for reconsideration; or

(b) apply to a prescribed Court in accordance with Division 4 of this Part for a judicial review of the determination.

(2.) Subject to the next two succeeding sub-sections, a prescribed Court has jurisdiction to hear and determine an application made to that Court in accordance with Division 4 of this Part.

(3.) The jurisdiction of a prescribed Court under the last preceding sub-section is not subject to any limits to which the jurisdiction of that

Court is subject under the law of the State or Territory of the Commonwealth in which it is constituted but that jurisdiction shall not be exercised—

- (a) in the case of a Court of a State—except by a Judge or by a stipendiary, police, resident or special magistrate; and
- (b) in the case of a Court of a Territory of the Commonwealth—except by a Judge or a stipendiary magistrate or, if there is no prescribed Court of that Territory that can be constituted by a Judge or by a stipendiary magistrate, by a chief, police, resident or special magistrate.

(4.) A prescribed Court, being a Court of a Territory of the Commonwealth, does not have jurisdiction to hear and determine an application for a judicial review of a determination unless a matter or question to which the determination relates arose out of an injury that occurred in that Territory, the duties of the relevant employment were performed wholly or partly in that Territory or the claimant or any of the claimants resides in that Territory.

(5.) Where a party to a determination has instituted a proceeding under either of the paragraphs of sub-section (1.) of this section in respect of the determination, another party to the determination is not entitled to institute a proceeding under the other paragraph in respect of that determination unless the first-mentioned proceeding has been discontinued.

(6.) Where, on the one day, a claimant institutes a proceeding under either of the paragraphs of sub-section (1.) of this section in respect of a determination and the Commonwealth institutes a proceeding under the other paragraph in respect of that determination, the proceeding instituted by the Commonwealth is of no effect.

(7.) Where, on the one day, a claimant institutes a proceeding under paragraph (a) of sub-section (1.) of this section in respect of a determination and another claimant institutes a proceeding under paragraph (b) of that sub-section in respect of the same determination, the second-mentioned proceeding is of no effect.

(8.) Where a determination is made varying an earlier determination—

- (a) if a proceeding has been instituted under either of the paragraphs of sub-section (1.) of this section in respect of either of the determinations—a party to the other determination is not entitled to institute a proceeding under the other paragraph in respect of that other determination unless and until the first-mentioned proceeding has been completed or discontinued, but nothing in this paragraph prevents a proceeding from being instituted in respect of the other determination under the first-mentioned paragraph; and
- (b) if, on the one day, a proceeding is instituted under either of the paragraphs of sub-section (1.) of this section in respect of either

of the determinations and a proceeding is instituted under the other paragraph in respect of the other determination—

- (i) if both proceedings were instituted by the same person—the proceeding instituted in respect of the later determination is of no effect;
- (ii) if one proceeding was instituted by a claimant and the other proceeding was instituted by the Commonwealth—the proceeding instituted by the Commonwealth is of no effect; and
- (iii) if the proceedings were instituted by different claimants—the proceeding instituted under paragraph (b) of sub-section (1.) of this section is of no effect.

Division 2.—Constitution of Compensation Tribunals.

Commonwealth Employees' Compensation Tribunals.

64.—(1.) The Governor-General may, by order in writing, establish one or more Commonwealth Employees' Compensation Tribunals.

(2.) A Compensation Tribunal shall be constituted by a person appointed by the Governor-General.

(3.) Subject to the directions of the Minister, a Compensation Tribunal may sit, for the purpose of reconsidering a matter or question, at any place, which may be a place outside Australia.

Tenure of office.

65.—(1.) Subject to this Division, a person constituting a Compensation Tribunal holds office for such period, not exceeding seven years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(2.) A person who has attained the age of sixty-five years shall not be appointed or re-appointed to constitute a Compensation Tribunal and a person shall not be so appointed or re-appointed for a period that extends beyond the date on which he will attain the age of sixty-five years.

Remuneration and allowances.

66.—(1.) A person constituting a Compensation Tribunal shall be paid such remuneration as the Parliament provides but, until the thirty-first day of December, One thousand nine hundred and seventy-one, that remuneration shall be as prescribed.

(2.) A person constituting a Compensation Tribunal shall be paid such allowances as are prescribed.

Leave of absence.

67. The Minister may grant leave of absence to a person constituting a Compensation Tribunal upon such terms and conditions as to remuneration or otherwise as the Minister determines.

Dismissal.

68. The Governor-General may terminate the appointment of a person constituting a Compensation Tribunal for inefficiency, misbehaviour or physical or mental incapacity.

Resignation.

69. A person constituting a Compensation Tribunal may resign his office by writing under his hand delivered to the Governor-General but the resignation does not have effect until it is accepted by the Governor-General.

Vacation of office.

70.—(1.) If a person constituting a Compensation Tribunal—

- (a) engages in paid employment outside the duties of his office without the approval of the Minister;
- (b) absents himself from duty for fourteen consecutive days, or for twenty-eight days in any twelve months, without leave granted by the Minister; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit,

the Governor-General shall, by notice in the *Gazette*, terminate the appointment of the person.

(2.) The Minister shall not give an approval for the purposes of paragraph (a) of the last preceding sub-section unless he is satisfied that the paid employment will not interfere with the performance of the duties of the person under this Act.

Application of Officers' Rights Declaration Act and Superannuation Act.

71.—(1.) If a person appointed to constitute a Compensation Tribunal was, immediately before his appointment, an officer of the Public Service of the Commonwealth—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service as a person constituting a Compensation Tribunal shall be taken into account as if it were service in the Public Service of the Commonwealth; and
- (c) the *Officers' Rights Declaration Act 1928-1969* applies as if this Act and this section had been specified in the Schedule to that Act.

(2.) For the purposes of sub-sections (3A.) and (4.) of section 4 of the *Superannuation Act 1922-1971*, a person constituting a Compensation Tribunal shall be deemed to be required, by the terms of his appointment, to give the whole of his time to the duties of his office.

Certain provisions not to apply to persons constituting Tribunal outside Australia.

72. Where a Compensation Tribunal is constituted by a person who resides outside Australia, the Governor-General may direct that paragraph (a) of sub-section (1.) of section 70, or section 71, of this Act is not, or that both of those provisions are not, to apply in relation to the person.

Oath or affirmation of allegiance and office.

73.—(1.) A person appointed to constitute a Compensation Tribunal shall, before proceeding to discharge the duties of his office, make an oath or affirmation in accordance with the form of oath or affirmation in the Second Schedule to this Act.

- (2.) The oath or affirmation shall—
- (a) be made within Australia or a Territory of the Commonwealth before a justice of the peace or a commissioner for affidavits; or
 - (b) be made at a place outside Australia and the Territories of the Commonwealth before—
 - (i) a commissioner of the High Court authorized to administer oaths in that place for the purposes of the High Court;
 - (ii) a commissioner of the Supreme Court of a State or Territory of the Commonwealth for taking affidavits empowered and authorized to act in that place;
 - (iii) an Australian Diplomatic Officer or an Australian Consular Officer, as defined by the *Consular Fees Act 1955*, exercising his function in that place; or
 - (iv) a notary public exercising his function in that place.

Person acting as Compensation Tribunal.

74.—(1.) Where a person constituting a Compensation Tribunal is, or is expected to be, absent from duty, or there is a vacancy in the office of a person constituting a Compensation Tribunal, the Governor-General may appoint a person to act in that office during the absence or until the filling of the vacancy, but a person so appointed by reason of a vacancy in that office shall not act in that office for a continuous period of more than twelve months.

(2.) Where a person has been appointed to act in the office of a person constituting a Compensation Tribunal during an absence from duty of the person constituting that Compensation Tribunal and the last-mentioned person ceases to hold office without having resumed duty, the period of appointment of the person so appointed shall be deemed to continue until it is terminated by the Governor-General, or until the expiration of twelve months from the date on which the person constituting that Tribunal ceases to hold office, whichever first happens.

(3.) The Governor-General may at any time terminate an appointment under this section.

(4.) Sections 67, 69 and 73 of this Act apply in relation to a person appointed under this section in like manner as they apply in relation to a person constituting a Compensation Tribunal appointed under section 64 of this Act.

(5.) Subject to this section, the Governor-General may determine the terms and conditions of an appointment under this section.

(6.) A person appointed to act in the office of a person constituting a Compensation Tribunal has all the powers and functions under this Act of the person constituting that Compensation Tribunal.

Clerks and Deputy Clerks of Compensation Tribunals.

- 75.—(1.) For the purposes of this Part, there shall, in respect of each Compensation Tribunal, be—
- (a) a Clerk; and
 - (b) such Deputy Clerks, if any, as are required.

- (2.) A Clerk and a Deputy Clerk—
(a) shall be appointed by the Minister; and
(b) have such powers and functions as are prescribed or as the Minister directs.

Division 3.—References to Compensation Tribunals.

References to Compensation Tribunal.

76.—(1.) A request by a party to a determination for the reference of a matter or question to a Compensation Tribunal for reconsideration—

- (a) shall be in writing signed by or on behalf of the person making the request;
(b) shall set out the grounds of the request;
(c) shall, subject to this section and the next succeeding section, be served on the Commissioner within sixty days after the date of service of a copy of the determination on the person making the request; and
(d) subject to paragraph (a) of sub-section (5.) of the next succeeding section, shall, in the case of a request by a claimant, be accompanied by the prescribed fee.

(2.) A copy of a request served by a party to a determination on the Commissioner under the last preceding sub-section shall be served by that party on every other party to the determination within the period within which the request is required by that sub-section to be served on the Commissioner.

(3.) If a person making a request in accordance with this section had, within fifteen days after the date of service on that person of a copy of the determination, requested the Commissioner, in pursuance of a notice referred to in paragraph (b) of sub-section (1.) of section 61 of this Act, to furnish to that person a statement setting out the reasons for the determination, the reference in paragraph (c) of sub-section (1.) of this section to the date of service of a copy of the determination shall, in its application to that person, be read as a reference to the date of service on that person of a statement setting out the reasons for the determination.

(4.) If a person making a request in accordance with this section had, within thirty days after the date of service on that person of a copy of the determination, requested the Commissioner, under paragraph (b) of sub-section (4.) of section 20 of this Act, to reconsider the determination, the reference in paragraph (c) of sub-section (1.) of this section to sixty days shall, in its application to the person, be read as a reference to one hundred and twenty days.

(5.) The fee referred to in paragraph (d) of sub-section (1.) of this section shall be refunded to the claimant if the Compensation Tribunal gives a decision favourable to the claimant.

Extension of time for requesting reference.

77.—(1.) A Compensation Tribunal may extend the time for the serving of a request on the Commissioner under the last preceding section, and may so extend that time although that time has expired.

(2.) A request for an extension of time under this section—

- (a) shall be in writing signed by or on behalf of the person making the request;
- (b) shall set out the grounds of the request;
- (c) shall be served on the Commissioner; and
- (d) shall, in the case of a request by the claimant, be accompanied by the prescribed fee.

(3.) A person who makes a request for an extension of time under this section shall, within seven days after service of the request on the Commissioner, cause a copy of the request to be served on each of the persons on whom he is required by sub-section (2.) of the last preceding section to serve a copy of a request under that section.

(4.) The succeeding sections of this Division (other than paragraphs (a), (b) and (c) of section 78, sub-section (2.) of section 79, sub-section (1.) of section 83 and sub-sections (1.) and (2.) of section 84) apply, so far as they are capable of application, in relation to a request for an extension of time as they apply in relation to a request for a reference of a matter or question for reconsideration but, in the application of those sections in relation to a request for an extension of time, a reference to the reconsideration of the matter or question shall be read as a reference to the determination of the request.

(5.) Where, in pursuance of this section, a Compensation Tribunal extends the time for the serving of a request on the Commissioner under the last preceding section—

- (a) a fee is not payable under paragraph (d) of sub-section (1.) of the last preceding section in respect of the request;
- (b) each copy of the request served in accordance with sub-section (2.) of the last preceding section shall be accompanied by a copy of the decision of the Tribunal granting the extension of time; and
- (c) sub-section (5.) of the last preceding section has effect as if the reference in that sub-section to the fee referred to in paragraph (d) of sub-section (1.) of that section were a reference to the fee referred to in paragraph (d) of sub-section (2.) of this section.

Commissioner to notify Clerk of request.

78. Upon receipt of a request in accordance with section 76 of this Act, the Commissioner shall send the request to the Clerk of a Compensation Tribunal together with—

- (a) a copy of the determination;
- (b) if the reasons for the determination are not set out in the determination—a statement setting out those reasons; and
- (c) a copy of each of the documents referred to in paragraphs (a), (b) and (c) of sub-section (2.) of section 61 of this Act.

Clerk to fix time and place for reconsideration of the matter or question by the Tribunal.

79.—(1.) As soon as practicable after the Commissioner has sent a request to the Clerk of a Compensation Tribunal, the Clerk shall fix a time and a place for the reconsideration of the matter or question by the Tribunal and shall serve notice of the time and place so fixed on—

- (a) the Commonwealth; and
- (b) the claimant or, if there is more than one claimant, each of the claimants.

(2.) Unless the Compensation Tribunal otherwise orders, the date fixed for a reconsideration of a matter or question shall be not less than sixty days after the day on which the request for the reconsideration was served on the Commissioner.

Procedure of Compensation Tribunal.

80. In proceedings before a Compensation Tribunal—

- (a) the procedure of the Tribunal is, subject to this Act and the regulations, within the discretion of the Tribunal;
- (b) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters and questions before the Tribunal permit; and
- (c) the Tribunal is not bound by the rules of evidence.

Proceedings to be in public except in special circumstances.

81.—(1.) Subject to the next succeeding sub-section, proceedings before a Compensation Tribunal shall be in public.

(2.) A Compensation Tribunal may, if it is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, direct that proceedings or a part of any proceedings before the Tribunal shall take place in private and may give directions as to the persons who may be present during the whole or any part of the proceedings.

Representation before Compensation Tribunal.

82. In proceedings before a Compensation Tribunal, a party may appear in person or may be represented by another person.

Powers of Compensation Tribunal.

83.—(1.) For the purpose of reconsidering a matter or question, a Compensation Tribunal may exercise all the powers that are conferred on the Commissioner by this Act in relation to the determination of matters and questions.

(2.) A Compensation Tribunal may—

- (a) take evidence on oath or affirmation and, for that purpose, administer an oath or affirmation;
- (b) proceed in the absence of a party who has had reasonable notice of the proceedings;
- (c) adjourn the proceedings from time to time;

- (d) summon a person to appear before it to give evidence and to produce such documents and articles (if any) as are referred to in the summons; and
- (e) subject to this Act and the regulations, give all such directions and do all such things as are necessary or convenient for the purposes of the reconsideration of the matter or question.

Reconsideration of matter or question by Compensation Tribunal.

84.—(1.) A Compensation Tribunal that reconsiders a matter or question shall, after due consideration of the matter or question, give a decision in writing—

- (a) affirming the determination made by the Commissioner in respect of that matter or question;
- (b) varying that determination; or
- (c) setting aside that determination and—
 - (i) making a determination in substitution for the determination so set aside; or
 - (ii) remitting the case for re-determination by the Commissioner in accordance with the directions of the Tribunal.

(2.) A Compensation Tribunal shall give reasons in writing for its decision and those reasons shall include its findings on material questions of fact.

(3.) The Clerk of a Compensation Tribunal shall, as soon as practicable after the Compensation Tribunal has given its decision, cause a copy of the decision to be served on the Commonwealth, the Commissioner and the claimant or, if there is more than one claimant, each of the claimants.

(4.) Without prejudice to any other method available by law for the proof of decisions of a Compensation Tribunal, a document purporting to be a copy of such a decision, and to be certified by the Clerk or a Deputy Clerk of that Compensation Tribunal to be a true copy of the decision, is, in any proceeding, evidence of the decision.

(5.) The last two preceding sub-sections apply in relation to the reasons given by a Compensation Tribunal for its decision as they apply in relation to the decision.

Costs of proceedings before Compensation Tribunal.

85.—(1.) Subject to this section, the costs incurred by a party in relation to proceedings before a Compensation Tribunal shall be borne by that party.

(2.) Where—

- (a) a Compensation Tribunal gives a decision—
 - (i) varying a determination of the Commissioner in a manner favourable to a party to the determination other than the Commonwealth; or
 - (ii) setting aside a determination of the Commissioner and making a determination in substitution for the determination so set aside that is more favourable to a party to the determination other than the Commonwealth than the determination so set aside; or

(b) a Compensation Tribunal gives a decision—

- (i) varying a determination of the Commissioner in a manner adverse to a party to the determination other than the Commonwealth; or
- (ii) setting aside a determination of the Commissioner and making a determination in substitution for the determination so set aside that is less favourable to a party to the determination other than the Commonwealth than the determination so set aside,

not being a decision made as the result of a reconsideration by the Tribunal of a matter or question in pursuance of a request by that party,

the Compensation Tribunal may order that the costs of the proceedings before it incurred by that party, or a part of those costs, shall be paid by the Commonwealth.

(3.) Where a Compensation Tribunal gives a decision setting aside a determination of the Commissioner and remitting the case for redetermination by the Commissioner, the Compensation Tribunal shall order that the costs of the proceedings before it incurred by parties to the determination other than the Commonwealth shall be paid by the Commonwealth.

(4.) Where—

- (a) a Compensation Tribunal gives a decision affirming a determination of the Commissioner; and
- (b) a party to the determination, not being the Commonwealth or a party at whose request the proceedings were instituted, incurred costs in connexion with the proceedings before the Tribunal,

the Tribunal shall order that those costs shall be paid by the Commonwealth.

(5.) Nothing in the last three preceding sub-sections authorizes a Compensation Tribunal to order the Commonwealth to pay any costs incurred by a party in relation to a request under section 77 of this Act for an extension of time.

(6.) Where, in accordance with this section, a Compensation Tribunal orders the Commonwealth to pay costs incurred by a party to a determination, the Tribunal may, in the absence of agreement between the Commonwealth and that party as to the amount of the costs to be so paid, tax or settle the amount of the costs to be so paid or specify the manner in which they are to be taxed.

(7.) This section does not limit the operation of sub-section (5.) of section 20 of this Act.

Protection of Compensation Tribunals, representatives and witnesses.

86.—(1.) A person constituting a Compensation Tribunal has, in the performance of the duties of his office, the same protection and immunity as a Justice of the High Court.

(2.) A person appearing before a Compensation Tribunal on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3.) Subject to this Act, a person appearing before a Compensation Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, in any civil or criminal proceedings as a witness in proceedings in the High Court.

Disobedience to summons, &c.

87.—(1.) A person who has been summoned to appear as a witness before a Compensation Tribunal shall not, without lawful excuse, fail to appear in obedience to the summons.

(2.) A person who has been summoned to produce a document or article to a Compensation Tribunal shall not, without lawful excuse, fail to produce the document or article.

(3.) A person who appears (whether summoned to appear or not) as a witness before a Compensation Tribunal shall not, without lawful excuse—

(a) refuse or fail to make an oath or affirmation;

(b) refuse or fail to answer a question that he is required by the Tribunal to answer; or

(c) refuse or fail to produce a document or article that he is required by the Tribunal to produce.

Penalty: One hundred dollars or imprisonment for fourteen days.

Fees for witnesses.

88. Where a person is summoned to appear as a witness before a Compensation Tribunal, the person is entitled to be paid the prescribed fee—

(a) in a case where the witness was summoned at the request of a party other than the Commonwealth—by that party; or

(b) in any other case—by the Commonwealth.

Offences in relation to Compensation Tribunal.

89. A person shall not—

(a) insult or disturb a person constituting a Compensation Tribunal in the exercise of his powers or functions;

(b) interrupt the proceedings of a Compensation Tribunal;

(c) use insulting language towards a person constituting a Compensation Tribunal;

(d) create a disturbance or take part in creating or continuing a disturbance in or near a place where a Compensation Tribunal is sitting;

- (e) contravene or fail to comply with a direction of a Compensation Tribunal given under sub-section (2.) of section 81 of this Act; or
- (f) do any other act or thing that would, if a Compensation Tribunal were a court of record, constitute a contempt of that court.

Penalty: One hundred dollars or imprisonment for fourteen days.

Division 4.—Applications to Prescribed Courts.

Applications to prescribed Court.

90.—(1.) An application to a prescribed Court for a judicial review of a determination shall be made by lodging with the appropriate officer of that Court, within the period of sixty days after the date of service of a copy of the determination on the person making the application, an application in writing, signed by or on behalf of that person, setting out the grounds of the application.

(2.) A copy of the application shall be served by the person making the application, within the period within which the application is required by the last preceding sub-section to be lodged with the appropriate officer of the Court—

- (a) on the Commissioner;
- (b) in the case of an application by the Commonwealth—on the claimant or, if there is more than one claimant, on each of the claimants; and
- (c) in the case of an application by a claimant—on the Commonwealth and, if there is another claimant or there are other claimants, on the other claimant or each of the other claimants.

(3.) If a person making an application in accordance with this section had, within fifteen days after the date of service on that person of a copy of the determination, requested the Commissioner, in pursuance of a notice referred to in paragraph (b) of sub-section (1.) of section 61 of this Act, to furnish to that person a statement setting out the reasons for the determination, the reference in sub-section (1.) of this section to the date of service of a copy of the determination shall, in its application to that person, be read as a reference to the date of service on that person of a statement setting out the reasons for the determination.

(4.) If the person making the application had, within thirty days after the date of service on that person of a copy of the determination, requested the Commissioner, under paragraph (b) of sub-section (4.) of section 20 of this Act, to reconsider the determination, the reference in sub-section (1.) of this section to sixty days shall, in its application to the person, be read as a reference to one hundred and twenty days.

(5.) Unless the prescribed Court otherwise orders, the date fixed for the hearing of an application shall be not less than sixty days after the day on which the application was lodged in accordance with sub-section (1.) of this section.

Extension of time for application.

91.—(1.) A prescribed Court may extend the time for lodging and serving an application under the last preceding section, and may so extend that time although that time has expired.

(2.) An application to a prescribed Court for an extension of time under this section shall be made by lodging with the appropriate officer of that Court an application in writing, signed by or on behalf of the person making the application, setting out the grounds of the application.

(3.) A person who applies to a prescribed Court for an extension of time for lodging and serving an application under the last preceding section shall, within seven days after lodgment of the application for extension, cause a copy of the application for extension to be served on each of the persons on whom he is required by sub-section (2.) of the last preceding section to serve a copy of the application under that section.

(4.) Where a prescribed Court has extended the time for lodging and serving an application under the last preceding section, each copy of the application served in accordance with sub-section (2.) of that section shall be accompanied by a copy of the order of the Court granting the extension of time.

Hearing of application.

92.—(1.) Subject to the Constitution, the hearing of an application under section 90 of this Act for a judicial review of a determination shall be in the nature of a re-hearing.

(2.) A prescribed Court hearing an application under section 90 of this Act for a judicial review of a determination shall—

(a) affirm the determination;

(b) vary the determination; or

(c) set aside the determination and—

(i) except where the next succeeding sub-paragraph applies, make a determination in substitution for the determination so set aside or remit the case to the Commissioner for re-determination in accordance with the directions of the Court; or

(ii) where, by reason of the Constitution, the review, in whole or in part, is not a re-hearing, remit the case to the Commissioner for re-determination in accordance with the directions of the Court.

(3.) Without limiting the operation of section 79 of the *Judiciary Act* 1903-1969, the provisions of the laws of the State or Territory of the Commonwealth in which a prescribed Court is constituted that relate to the summoning of persons to give evidence and produce documents and articles in an action in the original jurisdiction of that Court under the laws of that State or Territory apply in relation to the exercise of the jurisdiction of that Court under this Division as if it were exercising jurisdiction in such an action.

Cost of applications.

93.—(1.) A prescribed Court to which an application for a judicial review of a determination is made under this Division or to which an application is made under this Division for an extension of time may, in its discretion, order that the costs of the application incurred by any party, or a part of those costs, shall be paid by another party and, in the absence of agreement between the parties as to the amount of the costs to be so paid, may tax, or settle the amount of, those costs or specify the manner in which those costs are to be taxed.

(2.) An order for the payment of costs made by a prescribed Court in pursuance of this section is, when the amount of those costs is agreed or determined in accordance with this section, enforceable in all respects as a final judgment of that Court.

*Division 5.—Appeals from Compensation Tribunals and Prescribed Courts.***Appeals from Compensation Tribunals and prescribed Courts.**

94. Subject to the Constitution, a decision of a Compensation Tribunal or a judgment or order of a prescribed Court under the foregoing provisions of this Part is final except so far as appeals may be brought to the Commonwealth Industrial Court in accordance with this Division or appeals may be brought to the High Court from a judgment or order of the Commonwealth Industrial Court given or made under this Division.

Appeal to Commonwealth Industrial Court.

95.—(1.) A party to a proceeding under the foregoing provisions of this Part before a Compensation Tribunal or a prescribed Court may, in such manner and within such time as is prescribed, appeal, on a question of law only, to the Commonwealth Industrial Court from any decision of the Compensation Tribunal, or any judgment or order of the prescribed Court, as the case may be, in that proceeding.

(2.) The Commonwealth Industrial Court has jurisdiction to hear and determine an appeal instituted in that Court in accordance with the last preceding sub-section.

(3.) The Commonwealth Industrial Court shall hear and determine the appeal and—

- (a) may affirm, vary or set aside the decision of the Compensation Tribunal or the judgment or order of the prescribed Court;
- (b) may give such judgment, or make such order, as in all the circumstances it thinks fit; and
- (c) may remit the case for re-hearing and re-determination, either with or without the hearing of further evidence, by the Compensation Tribunal or prescribed Court, or for re-determination by the Commissioner, in accordance with the directions of the Commonwealth Industrial Court.

Exercise of jurisdiction of Commonwealth Industrial Court.

96.—(1.) Subject to the next succeeding sub-section, the jurisdiction of the Commonwealth Industrial Court with respect to appeals under this Division shall be exercised by a single Judge.

(2.) The Chief Judge of the Court may, if in his opinion an appeal under this Division involves the determination of a question of law of sufficient importance, direct that, for the purpose of that appeal, the Court shall be constituted by three Judges.

PART VI.—LIABILITIES ARISING OTHERWISE THAN UNDER THIS ACT.

Interpretation.

97. For the purposes of this Part—

- (a) a reference to damages shall be read as including a reference to an amount paid under a compromise or settlement of a claim for damages, whether legal proceedings had been instituted or not, but shall not be read as including a reference to an amount paid in respect of costs incurred in connexion with legal proceedings;
- (b) damages shall be deemed to have been recovered by an employee or by or for the benefit of a dependant of a deceased employee when the amount of the damages was paid to or for the benefit of the employee or dependant, as the case may be;
- (c) a reference to the loss of, or damage to, property used by an employee shall be read as a reference to the loss of, or damage to, an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by the employee, being a loss or damage that arose in circumstances referred to in section 28 of this Act; and
- (d) a reference to an employee or to a dependant of a deceased employee shall, if the employee or dependant has died, be read, unless the contrary intention appears, as including a reference to his legal personal representative.

Compensation not payable to person who is entitled to receive repatriation benefit.

98.—(1.) Compensation is not payable under this Act to an employee in respect of an injury if the employee has received, or is entitled to receive, in respect of an incapacity resulting from that injury, a pension (other than a service pension) in pursuance of a determination or assessment made under the *Repatriation Act 1920-1971*, the *Repatriation (Far East Strategic Reserve) Act 1956-1966*, the *Repatriation (Special Overseas Service) Act 1962-1968*, the *Interim Forces Benefits Act 1947-1966* or the *Native Members of the Forces Benefits Act 1957-1968*.

(2.) Compensation is not payable under this Act for the benefit of a dependant of a deceased employee in respect of an injury that resulted in the death of the employee if the dependant, or any other person, has received, or is entitled to receive, in pursuance of a determination or assessment under the *Repatriation Act 1920-1971*, the *Repatriation (Far East Strategic Reserve) Act 1956-1966*, the *Repatriation (Special Overseas Service) Act 1962-1968*, the *Interim Forces Benefits Act 1947-1966* or the *Native Members of the Forces Benefits Act 1957-1968*, a pension (other than a service pension), allowance or benefit (other than a funeral benefit) that the dependant or other person would not have received, or been entitled to receive, if the employee had not died.

(3.) Compensation is not payable under this Act in respect of the loss of, or damage to, property used by an employee if the employee has had, or is entitled to have, the property replaced or repaired under the *Repatriation Act 1920-1971*, the *Repatriation (Far East Strategic Reserve) Act 1956-1966*, the *Repatriation (Special Overseas Service) Act 1962-1968*, the *Interim Forces Benefits Act 1947-1966* or the *Native Members of the Forces Benefits Act 1957-1968*.

(4.) Where it appears to the Commissioner that—

(a) if a claim for a pension, allowance or benefit in relation to which any of the last three preceding sub-sections applies (in this sub-section referred to as a “repatriation benefit”) were made, the claim would be likely to be determined favourably to the claimant; or

(b) a pending claim for a repatriation benefit is likely to be so determined,

and, if the claim were so determined, compensation would not be payable under this Act in respect of a claim for compensation by reason of any of the last three preceding sub-sections, the Commissioner may refuse to determine that claim for compensation until such a claim for a repatriation benefit has been made and determined or the pending claim for a repatriation benefit has been determined.

Compensation payable where damages recovered.

99.—(1.) If—

(a) an employee recovers damages from the Commonwealth or from any other person in respect of an injury to the employee or in respect of the loss of, or damage to, property used by the employee; or

(b) damages are recovered by, or for the benefit of, a dependant of a deceased employee from the Commonwealth or from any other person in respect of the death of the employee, the succeeding provisions of this section have effect.

(2.) Subject to this section, the compensation that is payable under this Act to the employee in respect of the injury, loss or damage or for the benefit of the dependant in respect of the injury that resulted in the death, as the case may be, is so much (if any) of the compensation under this Act that, but for this section, would be so payable as exceeds the amount of the damages recovered by the employee or by or for the benefit of the dependant, as the case may be.

(3.) Subject to this section, if, before the recovery of the damages by or for the benefit of the employee or dependant, any compensation under this Act was paid to the employee in respect of the injury, loss or damage or for the benefit of the dependant in respect of the injury that resulted in the death, as the case may be, the employee or dependant is liable to pay to the Commonwealth the amount of the compensation so paid to

him or for his benefit or, if the amount of the damages recovered by him or for his benefit is less than the amount of that compensation, the amount of those damages.

(4.) If the damages recoverable by the employee or by or for the benefit of the dependant were reduced by reason that the employee was partly responsible for the injury or for the loss of, or damage to, property, as the case may be, the last two preceding sub-sections do not apply but the next three succeeding sub-sections have effect.

(5.) Subject to the next succeeding sub-section, any amount of compensation under this Act that, but for this section, would be payable to the employee in respect of the injury, loss or damage or for the benefit of the dependant in respect of the injury that resulted in the death, as the case may be, shall be reduced by so much of that amount as bears to that amount the same proportion as the amount of the damages recovered by or for the benefit of the employee or dependant bears to the amount of the damages that would have been recovered by or for the benefit of the employee or dependant if the employee had not been partly responsible for the injury, loss or damage.

(6.) The last preceding sub-section does not operate to reduce the total of the amounts of the compensation under this Act that, but for this section, would be payable to the employee or for the benefit of the dependant by an amount exceeding so much of the amount of the damages recovered by or for the benefit of the employee or dependant as bears to the amount of those damages the same proportion as the amount of those damages bears to the amount of the damages that would have been recovered by or for the benefit of the employee or dependant if the employee had not been partly responsible for the injury, loss or damage.

(7.) If, before the recovery of the damages by or for the benefit of the employee or dependant, an amount of compensation under this Act was paid to the employee in respect of the injury, loss or damage or for the benefit of the dependant in respect of the injury that resulted in the death, as the case may be, the employee or dependant is liable to pay to the Commonwealth so much of that amount as would not, by reason of the last two preceding sub-sections, have been paid if that amount had become payable immediately after the damages were recovered.

(8.) Where—

(a) a person is liable to pay an amount to the Commonwealth under this section; and

(b) the Commissioner or any other person holds on behalf of the first-mentioned person—

(i) moneys being compensation payable for the benefit of, or damages awarded to, the first-mentioned person; or

- (ii) investments acquired out of moneys of a kind referred to in the last preceding subparagraph,

the Commissioner or other person shall deduct from the moneys held by him, or shall realize the investments held by him and deduct from the proceeds of the realization, an amount not exceeding the amount that the first-mentioned person is liable to pay to the Commonwealth under this section and shall pay the amount so deducted to the Commonwealth, and the payment of that amount is, to the extent of the amount paid, a discharge of the liability of the first-mentioned person to the Commonwealth and of the Commissioner or other person to the first-mentioned person.

(9.) A reference in sub-section (3.) or sub-section (7.) of this section to compensation under this Act that was paid for the benefit of a dependant does not include a reference to compensation paid under sub-section (5.) or (7.) of section 43 of this Act.

Dependants not claiming compensation.

100.—(1.) Where—

- (a) a determination has been made under this Act in accordance with which the Commonwealth is liable to pay compensation in respect of an injury that resulted in the death of an employee; and
- (b) damages in respect of the death of the employee are recovered from the Commonwealth or from any other person by or for the benefit of a dependant of the deceased employee by whom or on whose behalf a claim for compensation under this Act in respect of that injury has not been made (in this section referred to as a “prescribed dependant”),

the next two succeeding sub-sections have effect in relation to that prescribed dependant.

(2.) If that prescribed dependant is the only prescribed dependant, he is liable to pay to the Commonwealth—

- (a) the amount of the compensation referred to in paragraph (a) of the last preceding sub-section; or
- (b) the amount of the damages recovered by him,

whichever is the less.

(3.) If that prescribed dependant is not the only prescribed dependant, he is liable to pay to the Commonwealth—

- (a) an amount that bears to the amount of the compensation referred to in paragraph (a) of sub-section (1.) of this section the same proportion as the amount of the damages recovered by him bears to the total of the amounts of the damages recovered by all prescribed dependants from the Commonwealth or from any other person in respect of the death of the employee; or
- (b) the amount of the damages recovered by him,

whichever is the less.

(4.) For the purposes of the last two preceding sub-sections, the amount of compensation referred to in paragraph (a) of sub-section (1.) of this section—

(a) shall be deemed not to include—

(i) any amount of compensation that the Commonwealth is liable to pay for the benefit of a dependant of the deceased employee who is not entitled to recover damages in respect of the death of the employee (including a dependant who is not entitled to recover damages by reason of the operation of a statute of limitations); and

(ii) any amount of compensation payable under sub-section (5.) or (7.) of section 43 of this Act; and

(b) shall be deemed to be reduced by any amount that a dependant of the deceased employee is liable to pay to the Commonwealth under the last preceding section.

(5.) If the damages recovered by a prescribed dependant of a deceased employee were reduced by reason that the employee was partly responsible for the injury, a reference in sub-section (2.) or (3.) of this section to the amount of the damages recovered by that prescribed dependant shall be read as a reference to so much only of that amount as bears to that amount the same proportion as that amount bears to the amount of the damages that would have been recovered by that prescribed dependant if the employee had not been partly responsible for the injury.

(6.) Where—

(a) a person is liable to pay an amount to the Commonwealth under this section; and

(b) the Commissioner or any other person holds on behalf of the first-mentioned person—

(i) moneys being compensation payable for the benefit of, or damages awarded to, the first-mentioned person; or

(ii) investments acquired out of moneys of a kind referred to in the last preceding subparagraph,

the Commissioner or other person shall deduct from the moneys held by him, or shall realize the investments held by him and deduct from the proceeds of the realization, an amount not exceeding the amount that the first-mentioned person is liable to pay to the Commonwealth under this section and shall pay the amount so deducted to the Commonwealth, and the payment of that amount is, to the extent of the amount paid, a discharge of the liability of the first-mentioned person to the Commonwealth and of the Commissioner or other person to the first-mentioned person.

Power of Commonwealth to request proceedings to be taken against third party or to take such proceedings itself.

101.—(1.) Where—

(a) an amount of compensation under this Act—

(i) is paid to an employee in respect of an injury to the employee or in respect of the loss of, or damage to, property used by the employee; or

- (ii) is paid for the benefit of a dependant of a deceased employee in respect of an injury that resulted in the death of the employee;
- (b) the injury, loss, damage or death occurred in circumstances that appear to create a legal liability in a person other than the Commonwealth to pay damages in respect of the injury, loss, damage or death; and
- (c) proceedings against that person for the purpose of recovering such damages have not been instituted by the employee or by or for the benefit of the dependant, or have been so instituted but have been discontinued or have not been properly prosecuted,

the Commonwealth may request the employee or dependant to institute proceedings or fresh proceedings against that person for that purpose or properly to prosecute the proceedings, as the case may be.

(2.) Where an employee or dependant is requested in accordance with the last preceding sub-section to institute proceedings against a person—

- (a) if the employee or dependant refuses, or fails within a reasonable time after the making of the request, to institute the proceedings or, having instituted the proceedings, discontinues the proceedings—the Commonwealth may institute proceedings or fresh proceedings, as the case may be, against the person in the name of the employee or dependant for the recovery of damages in respect of the injury, loss, damage or death; or
- (b) if the employee or dependant, having instituted the proceedings, fails properly to prosecute the proceedings—the Commonwealth may take over the conduct of the proceedings.

(3.) Where an employee or dependant who is requested in accordance with sub-section (1.) of this section properly to prosecute proceedings instituted against a person refuses, or fails within a reasonable time after the making of the request, to do so, the Commonwealth may take over the conduct of the proceedings.

(4.) The Commonwealth is liable to pay all costs of or incidental to proceedings referred to in any of the last three preceding sub-sections, being costs payable by the plaintiff in those proceedings, but not including costs unreasonably incurred by the plaintiff.

(5.) Where, in accordance with this section, the Commonwealth institutes proceedings in the name of an employee or dependant or takes over the conduct of proceedings that have been instituted in the name of an employee or dependant—

- (a) the Commonwealth may—
 - (i) settle the proceedings either with or without obtaining judgment in the proceedings; and

- (ii) if a judgment is obtained in the proceedings in favour of the plaintiff—take such steps as are necessary to enforce that judgment; and
- (b) the employee or dependant shall sign any document relevant to the proceedings, including the settlement of the proceedings, that the Commonwealth requires him to sign and, if he fails to sign any such document, the court or tribunal in which the proceedings are being taken may direct that that document be signed on his behalf by a person appointed by the Commonwealth for the purpose.

Payment of damages by persons to Commonwealth.

102.—(1.) Where a person other than the Commonwealth appears to be liable—

- (a) to pay damages to an employee in respect of an injury to the employee, or in respect of the loss of, or damage to, property used by the employee, being an injury, loss or damage in respect of which an amount of compensation has been paid under this Act; or
- (b) to pay damages to a dependant of a deceased employee in respect of the death of the employee, being death that resulted from an injury in respect of which an amount of compensation has been paid under this Act,

the Commonwealth may, by notice in writing to the person, require the person, in the event of the person agreeing to pay damages to the employee in respect of the injury, loss or damage or to the dependant in respect of the death or in the event of damages against the person being awarded to the employee in proceedings instituted in respect of the injury, loss or damage or to the dependant in proceedings instituted in respect of the death, to pay to the Commonwealth so much of the amount of the damages as does not exceed the amount that would be payable by the employee or dependant to the Commonwealth under section 99 or 100 of this Act if the damages had been paid to or in respect of the employee or dependant, and the person shall comply with the notice.

(2.) Subject to the next succeeding sub-section, where—

- (a) a person other than the Commonwealth has agreed—
 - (i) to pay damages to an employee in respect of an injury to the employee, or in respect of the loss of, or damage to, property used by the employee, being an injury, loss or damage in respect of which an amount of compensation has been paid under this Act; or
 - (ii) to pay damages to a dependant of a deceased employee in respect of the death of the employee, being death that resulted from an injury in respect of which an amount of compensation has been paid under this Act; or

- (b) damages against a person other than the Commonwealth have been awarded—
- (i) to an employee in proceedings instituted in respect of an injury to the employee or in respect of the loss of, or damage to, property used by the employee, being an injury, loss or damage in respect of which an amount of compensation has been paid under this Act; or
 - (ii) to a dependant of a deceased employee in proceedings instituted in respect of the death of the employee, being death that resulted from an injury in respect of which an amount of compensation has been paid under this Act,

the Commonwealth may, by notice in writing to the person, require the person to pay to the Commonwealth so much of the amount of the damages as does not exceed the amount that would be payable by the employee or dependant to the Commonwealth under section 99 or 100 of this Act if the damages had been paid to or in respect of the employee or dependant, and the person shall comply with the notice.

(3.) Where, before a notice under the last preceding sub-section was received by a person, the person had paid to or in respect of the employee or dependant the whole or any part of the damages to which the notice related—

- (a) if the whole of the damages had been paid—the notice has no force or effect; or
- (b) if a part only of the damages had been paid—the reference in that sub-section to the amount of the damages shall be read as a reference to so much of that amount as had not been paid.

(4.) If a person fails to pay an amount to the Commonwealth in pursuance of a notice under this section, the Commonwealth may recover that amount from the person as a debt due to the Commonwealth by action in a court of competent jurisdiction.

(5.) The payment of an amount to the Commonwealth by a person in pursuance of a notice under this section is, to the extent of the amount paid, a discharge of the liability of that person to the employee or dependant and of the liability (if any) of the employee or dependant to the Commonwealth under section 99 or 100 of this Act.

Compensation not payable both under Act and under determination.

103.—(1.) In this section, “determination” means a determination, award or order by which provision is made for or in relation to the grant of any benefits to or in relation to employees or their dependants in respect of injury or disease causing death or incapacity, or in respect of the loss of, or damage to, property, in circumstances connected with the employment of those employees, being—

- (a) a determination made under the *Public Service Arbitration Act 1920-1969*;

- (b) an award or order made under the *Conciliation and Arbitration Act 1904-1970*; or
(c) a determination, award or order made by a prescribed person, tribunal or body under a law of the Commonwealth or of a Territory of the Commonwealth.

(2.) A person who would, but for this section, be entitled to compensation under this Act and to benefits under a determination in respect of the same injury, or in respect of the same loss of, or damage to, property, is not entitled to receive both compensation under this Act and benefits under the determination but shall elect whether to receive the compensation or the benefits.

(3.) An employee who has made an election under the last preceding sub-section may revoke the election and make a fresh election to receive either compensation under this Act or benefits under the determination but a fresh election so made by an employee is irrevocable.

(4.) Where, in accordance with the last preceding sub-section, an employee revokes an election and makes a fresh election to receive either compensation under this Act or benefits under the determination but compensation is not payable under this Act, or benefits are not payable under the determination, as the case may be, in respect of the injury or loss of, or damage to, property, the revocation and fresh election shall be treated as not having been made.

(5.) Where an employee revokes an election and makes a fresh election in accordance with sub-section (3.) of this section, the fresh election has effect only in relation to a period after the date of the election.

(6.) Where an employee who has made an election under sub-section (2.) of this section to receive benefits under a determination revokes the election and makes a fresh election in accordance with sub-section (3.) of this section to receive compensation under this Act, a claim in writing for the compensation that is served on the Commissioner within six months after the date of the fresh election shall be deemed to have been served within the period prescribed for the purposes of sub-section (1.) of section 54 of this Act.

(7.) Where an employee who has made an election under sub-section (2.) or sub-section (3.) of this section dies, the election does not have effect in relation to his dependants.

(8.) The regulations may exclude a determination specified in the regulations from the operation of this section.

PART VII.—TRANSITIONAL.

Application of Act to pre-existing injuries and diseases.

104.—(1.) Subject to this Part, this Act other than section 120 applies in relation to an injury sustained, a disease contracted, or an aggravation, acceleration or recurrence of a disease suffered, by an employee before the proclaimed date as it applies in relation to an injury sustained, a disease contracted, or an aggravation, acceleration or recurrence of a disease suffered, by an employee on or after that date.

(2.) The last preceding sub-section does not entitle a person to receive compensation under this Act in respect of an injury sustained before the proclaimed date, or in respect of a disease, or an aggravation, acceleration or recurrence of a disease, symptoms of which first became apparent before that date, if compensation was not payable in respect of that injury, that disease or that aggravation, acceleration or recurrence, as the case may be—

- (a) in the case of an injury sustained, or a disease or an aggravation, acceleration or recurrence of a disease symptoms of which first became apparent, before the commencement of the *Commonwealth Employees' Compensation Act 1930*—under the *Commonwealth Workmen's Compensation Act 1912*; or
- (b) in any other case—under the *Commonwealth Employees' Compensation Act 1930*, or that Act as amended, as in force at the time when the injury was sustained or symptoms of the disease, or of the aggravation, acceleration or recurrence, first became apparent.

(3.) Sub-section (1.) of this section does not entitle a person to receive compensation under section 39 of this Act in respect of a loss referred to in that section, or under sub-section (3.) or sub-section (4.) of section 43 of this Act in respect of the death of an employee, being a loss or death that occurred before the proclaimed date, if—

- (a) that person has received compensation by way of a lump sum in respect of that loss or death under the *Commonwealth Workmen's Compensation Act 1912* or under the *Commonwealth Employees' Compensation Act 1930* or that Act as amended; or
- (b) that person was not entitled to receive compensation by way of a lump sum in respect of that loss or death—
 - (i) in the case of a loss or death that occurred before the commencement of the *Commonwealth Employees' Compensation Act 1930*—under the *Commonwealth Workmen's Compensation Act 1912*; or
 - (ii) in any other case—under the *Commonwealth Employees' Compensation Act 1930*, or that Act as amended, as in force at the time when the loss or death occurred.

(4.) The amount of the compensation, if any, that a person is, by virtue of sub-section (1.) of this section, entitled to receive under section 39 of this Act in respect of a loss referred to in that section, or under sub-section (3.) or sub-section (4.) of section 43 of this Act in respect of the death of an employee, being a loss or death that occurred before the proclaimed date, shall not exceed the amount of the compensation by way of a lump sum that would, if this Act other than Part VIII. had not been enacted, have been payable to that person in respect of that loss or death—

- (a) in the case of a loss or death that occurred before the commencement of the *Commonwealth Employees' Compensation Act 1930*—under the *Commonwealth Workmen's Compensation Act 1912*; or

(b) in any other case—under the *Commonwealth Employees' Compensation Act 1930*, or that Act as amended, as in force at the time when the loss or death occurred.

(5.) Sub-section (1.) of this section does not entitle a person to receive compensation under section 40, 41 or 42 of this Act in respect of a loss or disfigurement that occurred before the proclaimed date.

(6.) Sub-section (1.) of this section does not entitle a person to receive compensation under section 48 of this Act in respect of a period that occurred before the proclaimed date.

(7.) Sub-section (1.) of this section does not entitle a person to receive compensation under sub-section (5.) of section 43 of this Act in respect of the death of an employee, or under section 45, 46, 47 or 50 of this Act in respect of an incapacity, where the compensation relates to a period that occurred before the proclaimed date, if—

(a) that person has received weekly payments of compensation in respect of that death or incapacity in respect of that period under the *Commonwealth Workmen's Compensation Act 1912* or under the *Commonwealth Employees' Compensation Act 1930* or that Act as amended; or

(b) that person was not entitled to receive weekly payments of compensation in respect of that death or incapacity in respect of that period—

(i) in the case of a death or period of incapacity that occurred before the commencement of the *Commonwealth Employees' Compensation Act 1930*—under the *Commonwealth Workmen's Compensation Act 1912*; or

(ii) in any other case—under the *Commonwealth Employees' Compensation Act 1930*, or that Act as amended, as in force at the time of the death or during the period of incapacity.

(8.) The rate of compensation, if any, that a person is, by virtue of sub-section (1.) of this section, entitled to receive under sub-section (5.) of section 43 of this Act in respect of the death of an employee, or under section 45, 46, 47 or 50 of this Act in respect of an incapacity, where the compensation relates to a period that occurred before the proclaimed date, shall not exceed the rate of compensation that would, if this Act other than Part VIII. had not been enacted, have been payable to that person in respect of that period—

(a) in the case of a period that occurred before the commencement of the *Commonwealth Employees' Compensation Act 1930*—under the *Commonwealth Workmen's Compensation Act 1912*; or

(b) in any other case—under the *Commonwealth Employees' Compensation Act 1930*, or that Act as amended, as in force during that period.

(9.) Sub-section (1.) of this section does not entitle a person to receive compensation under sub-section (1.) or sub-section (7.) of section 37 or section 44 of this Act in respect of any cost the liability to pay which arose, or any expenditure that was incurred, before the proclaimed date if—

(a) an amount was paid in respect of that cost or expenditure under the *Commonwealth Workmen's Compensation Act 1912* or under the *Commonwealth Employees' Compensation Act 1930* or that Act as amended; or

(b) an amount was not payable in respect of that cost or expenditure—

(i) in the case of any cost the liability to pay which arose, or any expenditure that was incurred, before the commencement of the *Commonwealth Employees' Compensation Act 1930*—under the *Commonwealth Workmen's Compensation Act 1912*; or

(ii) in any other case—under the *Commonwealth Employees' Compensation Act 1930*, or that Act as amended, as in force at the time when the liability to pay the cost arose or the expenditure was incurred.

(10.) The amount of the compensation, if any, that is, by virtue of sub-section (1.) of this section, payable under sub-section (1.) or sub-section (7.) of section 37 or section 44 of this Act in respect of the cost of medical treatment, or of expenditure incurred in relation to obtaining medical treatment, or in respect of the cost of a funeral, being cost the liability to pay which arose, or expenditure that was incurred, before the proclaimed date, shall not exceed the amount that, if this Act other than Part VIII. had not been enacted, would have been payable in respect of that cost or expenditure—

(a) in the case of any cost the liability to pay which arose, or any expenditure that was incurred, before the commencement of the *Commonwealth Employees' Compensation Act 1930*—under the *Commonwealth Workmen's Compensation Act 1912*; or

(b) in any other case—under the *Commonwealth Employees' Compensation Act 1930*, or that Act as amended, as in force at the time when the liability to pay the cost arose or the expenditure was incurred.

(11.) Sub-section (1.) of this section does not entitle a person to receive compensation under sub-section (3.) or sub-section (9.) of section 37 of this Act in respect of any cost the liability to pay which arose, or any expenditure that was incurred, before the proclaimed date.

(12.) Where—

- (a) in respect of an injury sustained, or a disease, or an aggravation, acceleration or recurrence of a disease, symptoms of which first became apparent, before the commencement of the *Commonwealth Employees' Compensation Act 1930*, proceedings for the recovery of compensation under the *Commonwealth Workmen's Compensation Act 1912* were not maintainable by a person by reason of section 5 of that Act; or
- (b) in respect of an injury sustained, or a disease, or an aggravation, acceleration or recurrence of a disease, symptoms of which first became apparent, after the commencement of the *Commonwealth Employees' Compensation Act 1930* and before the proclaimed date, a claim for compensation by a person under the *Commonwealth Employees' Compensation Act 1930*, or under that Act as amended, was not admissible by reason of section 16 of that Act, or of that Act as amended,

sub-section (1.) of this section does not entitle that person to receive compensation under this Act in respect of that injury, that disease or that aggravation, acceleration or recurrence, as the case may be.

(13.) Section 99 of this Act does not apply by virtue of sub-section (1.) of this section where the damages referred to in that section were recovered before the proclaimed date.

(14.) Section 100 of this Act does not apply in relation to a prescribed dependant where that dependant recovered the damages referred to in that section before the proclaimed date.

(15.) For the purposes of the application of this Act by virtue of sub-section (1.) of this section in relation to an injury sustained before the proclaimed date, or in relation to a disease, or an aggravation, acceleration or recurrence of a disease, symptoms of which first became apparent before that date—

- (a) the weekly pay of the employee at the date of the injury, as ascertained in accordance with the *Commonwealth Employees' Compensation Act 1930-1971*, shall be treated for the purposes of Part III. as being the average weekly earnings of the employee before the injury; and
- (b) section 46 of this Act has effect as if sub-section (4.) of that section were omitted.

Payments under previous Acts.

105.—(1.) Any payment made by the Commonwealth before the proclaimed date in respect of a liability of the Commonwealth under the *Commonwealth Workmen's Compensation Act 1912*, or under the *Commonwealth Employees' Compensation Act 1930* or that Act as amended, in respect of an injury, a disease or an aggravation, acceleration or recurrence of a disease shall be deemed to have been made in respect of the corresponding liability of the Commonwealth to make such a payment under this Act in respect of that injury, that disease or that aggravation, acceleration or recurrence.

(2.) Without limiting by implication the generality of the last preceding sub-section, any payment referred to in that sub-section that had effect as a redemption of a liability of the Commonwealth referred to in that sub-section has effect as a redemption under section 49 of this Act of the corresponding liability of the Commonwealth referred to in that sub-section.

Notices, claims, &c., under previous Acts.

106.—(1.) A notice duly given or served before the proclaimed date under section 5 of the *Commonwealth Workmen's Compensation Act* 1912, or under section 16 of the *Commonwealth Employees' Compensation Act* 1930 or that Act as amended, in relation to an accident shall be deemed to be a notice duly served on the Commonwealth under section 53 of this Act in relation to the injury or injuries that resulted from the accident.

(2.) A claim for compensation duly made before the proclaimed date under the *Commonwealth Workmen's Compensation Act* 1912 or under the *Commonwealth Employees' Compensation Act* 1930 or that Act as amended shall be deemed to be a claim for compensation duly made under this Act.

(3.) Where a requirement was made under section 19 of the *Commonwealth Employees' Compensation Act* 1930, or that Act as amended, that an employee submit himself for examination by a medical referee or other legally qualified medical practitioner but the requirement had not been complied with before the proclaimed date, the requirement continues to have effect as if it had been made by the Commissioner under sub-section (1.) of section 58 of this Act and the medical referee or medical practitioner were a medical referee or medical practitioner duly nominated under that sub-section.

(4.) A certificate duly given before the proclaimed date by a medical board under section 19 of the *Commonwealth Employees' Compensation Act* 1930, or that Act as amended, shall be deemed to be a joint certificate duly given under section 59 of this Act by all the members of a medical board duly constituted under this Act.

(5.) An election made by an employee under section 15 of the *Commonwealth Employees' Compensation Act* 1930 or that Act as amended shall—

(a) in the case of an election to take compensation or benefits under a determination referred to in that section—be deemed to be an election made under sub-section (2.) of section 103 of this Act to receive benefits under that determination; or

(b) in the case of an election to take compensation or benefits under that Act—be deemed to be an election made under sub-section (2.) of section 103 of this Act to receive compensation under this Act,

but sub-section (3.) of section 103 of this Act does not apply in relation to that election.

(6.) A request to an employee made by the Commissioner before the proclaimed date under paragraph (b) of sub-section (1.) of section 17 of the *Commonwealth Employees' Compensation Act 1930-1951* or that Act as amended shall be deemed to be a request made by the Commonwealth to the employee under sub-section (1.) of section 101 of this Act.

(7.) A notice given to a person by the Commonwealth before the proclaimed date under paragraph (d) of sub-section (1.) of section 17 of the *Commonwealth Employees' Compensation Act 1930-1951* or that Act as amended shall be deemed to be a notice given by the Commonwealth to that person under sub-section (1.) of section 102 of this Act.

Determinations under previous Acts.

107.—(1.) Any settlement, whether by agreement, arbitration or judicial decision, effected under the *Commonwealth Workmen's Compensation Act 1912* and having force or effect immediately before the proclaimed date, being a settlement of the liability of the Commonwealth to pay compensation or make any other payment under that Act in respect of an injury or disease, shall be deemed to be a determination made by the Commissioner under this Act in respect of the corresponding liability of the Commonwealth to pay compensation or make a similar payment under this Act in respect of that injury or disease, but section 61 of this Act and Part V. do not apply in relation to that settlement.

(2.) Subject to this section, any determination made or action taken by, or by a delegate of, a person who held office as Commissioner for Employees' Compensation under the *Commonwealth Employees' Compensation Act 1930*, or that Act as amended, and having force or effect immediately before the proclaimed date, being a determination or action in respect of the liability of the Commonwealth to pay compensation or make any other payment under that Act, or that Act as amended, in respect of an injury or disease, or an aggravation, acceleration or recurrence of a disease, shall be deemed to be a determination made by the Commissioner under this Act in respect of the corresponding liability of the Commonwealth to pay compensation or make a similar payment under this Act in respect of that injury, that disease or that aggravation, acceleration or recurrence.

(3.) Where a determination or action referred to in the last preceding sub-section has been or is varied by a court on an appeal, the last preceding sub-section has effect in relation to that determination or action as so varied.

(4.) Except as provided by the succeeding provisions of this section, section 61 of this Act and Part V. do not apply in relation to a determination or action to which sub-section (2.) of this section applies.

(5.) Subject to this section, the repeals effected by sub-section (1.) of section 4 of this Act do not affect any application that, by virtue of section 8 of the *Acts Interpretation Act 1901-1966*, section 20 of the *Commonwealth Employees' Compensation Act 1930-1971* may have in relation to a determination or action to which sub-section (2.) of this section applies.

(6.) Where no person affected by a determination or action to which sub-section (2.) of this section applies had, before the proclaimed date, instituted an appeal in a County Court against that determination or action under the Acts repealed by this Act but the time for instituting such an appeal had not expired before that date, section 20 of the *Commonwealth Employees' Compensation Act 1930-1971* does not, by virtue of section 8 of the *Acts Interpretation Act 1901-1966*, apply in relation to that determination or action but section 61 of this Act and Part V. apply.

(7.) The reference in the last preceding sub-section to the time for instituting an appeal not having expired before the proclaimed date does not include a reference to the time for instituting an appeal not having expired by reason that a County Court has allowed further time for the institution of the appeal.

(8.) Where—

(a) an appeal was, before the proclaimed date, instituted in a County Court against a determination or action to which sub-section (2.) of this section applies and that appeal was not determined before that date; or

(b) the time for instituting an appeal in a County Court against a determination or action to which sub-section (2.) of this section applies expired before the proclaimed date but a County Court allowed or allows further time for the institution of the appeal and the appeal is, on or after that date, instituted within that further time,

the appeal shall be deemed to be an application duly made under Part V. for a judicial review of the determination and, if the County Court is not a prescribed Court, that Part applies as if the County Court were a prescribed Court.

(9.) For the purposes of the application of Part V. in relation to a determination or action to which sub-section (6.) of this section applies, the references in paragraph (c) of sub-section (1.) of section 76, and sub-section (1.) of section 90, of this Act to the date of service of a copy of a determination shall be read as references to the date of service of the notice referred to in paragraph (c) of sub-section (1.) of section 61 of this Act.

(10.) Where a judgment or order of a County Court was given or made before the proclaimed date in an appeal instituted under sub-section (1.) of section 20 of the *Commonwealth Employees' Compensation Act 1930-1971* and an appeal has not been instituted before that date against that judgment or order, Division 5 of Part V. applies in relation to that judgment or order as if the judgment or order were a judgment or order of a prescribed Court under that Part.

(11.) In this section, "County Court" has the same meaning as in the *Commonwealth Employees' Compensation Act 1930-1971*.

Moneys and investments held under repealed Acts.

108.—(1.) All moneys and investments that the person who held office as Commissioner for Employees' Compensation under section 5 of the *Commonwealth Employees' Compensation Act 1930-1971* held immediately before the proclaimed date by virtue of his holding that office are, by force of this sub-section, vested in the Commissioner and shall be held for the benefit of the person or persons for whose benefit the moneys and investments were held immediately before that date.

(2.) A bank account in which any such moneys are held shall be deemed to be an account maintained under section 21 of this Act.

(3.) Any accounts and records kept in relation to moneys and investments referred to in sub-section (1.) of this section shall, for the purposes of section 23 of this Act, be deemed to be kept in accordance with section 22 of this Act.

(4.) All moneys and investments that a prescribed authority held immediately before the proclaimed date by virtue of a payment made to that authority under the First Schedule to the *Commonwealth Workmen's Compensation Act 1912* or that a trustee held immediately before that date by virtue of an appointment under paragraph (7.) of the First Schedule to the *Commonwealth Employees' Compensation Act 1930* or that Act as amended are, by force of this sub-section, vested in the Commissioner and shall be held for the benefit of the person or persons for whose benefit the moneys and investments were held immediately before that date.

(5.) As soon as practicable after the proclaimed date, any authority or trustee referred to in the last preceding sub-section shall pay or transfer to the Commissioner any moneys or investments held by him in relation to which that sub-section applies.

PART VIII.—AMENDMENTS OF THE COMMONWEALTH EMPLOYEES' COMPENSATION ACT 1930-1970.**Citation.**

109.—(1.) In this Part, the *Commonwealth Employees' Compensation Act 1930-1970* is referred to as the Principal Act.

(2.) The Principal Act, as amended by this Part, may be cited as the *Commonwealth Employees' Compensation Act 1930-1971*.

Compensation for certain injuries.

110. Section 12 of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the words "Twelve thousand dollars" and inserting in their stead the words "Thirteen thousand five hundred dollars"; and
- (b) by omitting sub-section (2.).

Maximum compensation.

111. Section 13 of the Principal Act is amended by omitting from sub-section (1.) the words "Twelve thousand dollars" and inserting in their stead the words "Thirteen thousand five hundred dollars".

First Schedule.

112. The First Schedule to the Principal Act is amended—

- (a) by omitting from clause (i) of sub-paragraph (a) of paragraph (1.) the words “Twelve thousand dollars” and inserting in their stead the words “Thirteen thousand five hundred dollars”;
- (b) by omitting from clause (iii) of sub-paragraph (a) of paragraph (1.) the words “One hundred and twenty dollars” and inserting in their stead the words “Three hundred dollars”;
- (c) by omitting from sub-paragraph (b) of paragraph (1.) the words “Thirty-one dollars eighty cents” and inserting in their stead the words “Thirty-five dollars”;
- (d) by omitting from clause (i) of sub-paragraph (b) of paragraph (1.) the words “Seven dollars seventy cents” and inserting in their stead the words “Eight dollars fifty cents”;
- (e) by omitting from clause (ii) of sub-paragraph (b) of paragraph (1.) the words “Two dollars eighty cents” and inserting in their stead the words “Five dollars”;
- (f) by omitting from clause (i) of sub-paragraph (c) of paragraph (1.) the words “Thirty-one dollars eighty cents” and inserting in their stead the words “Thirty-five dollars”;
- (g) by omitting from clause (i) of sub-paragraph (a) of paragraph (1A.) the word “but”;
- (h) by omitting clause (ii) of sub-paragraph (a) of paragraph (1A.);
- (j) by adding at the end of clause (i) of sub-paragraph (b) of paragraph (1A.) the word “and”;
- (k) by omitting clause (iii) of sub-paragraph (b) of paragraph (1A.); and
- (l) by omitting from paragraph (9A.) the words “Two hundred and eighty dollars” (wherever occurring) and inserting in their stead the words “Five hundred dollars”.

Third Schedule.

113. The Third Schedule to the Principal Act is repealed and the following Schedule inserted in its stead:—

THE THIRD SCHEDULE

Section 12.

PART I.**INJURIES IN RESPECT OF WHICH THE AMOUNT OF COMPENSATION SPECIFIED IN SECTION 12 (1.) IS PAYABLE**

Loss of, or total loss of sight of, both eyes

Loss of, or total loss of sight of, a useful eye, the other being blind or absent

Loss of both hands

Loss of hand and foot

Loss of both feet

PART II.

INJURIES IN RESPECT OF WHICH A PERCENTAGE OF THE AMOUNT OF COMPENSATION SPECIFIED IN SECTION 12(1.) IS PAYABLE

First Column Nature of Injury	Second Column Percentage
Loss of, or total loss of sight of, one eye, with serious diminution of the sight of the other	75
Loss of, or total loss of sight of, one eye.....	40
Total loss of hearing.....	70
Complete deafness of one ear.....	20
Loss of arm at or above elbow	80
Loss of arm below elbow, loss of hand or loss of thumb and four fingers of the one hand.....	70
Loss of thumb.....	30
Loss of forefinger.....	20
Loss of middle finger	16
Loss of ring finger.....	14
Loss of little finger.....	13
Total loss of movement of joint of thumb.....	14
Loss of distal phalanx or joint of thumb.....	16
Loss of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx or joint.....	14
Loss of two phalanges or joints of forefinger.....	12
Loss of two phalanges or joints of middle or ring finger	11
Loss of two phalanges or joints of little finger.....	10
Loss of distal phalanx or joint of forefinger.....	10
Loss of distal phalanx or joint of other finger.....	8
Loss of leg at or above knee.....	75
Loss of leg below knee.....	65
Loss of foot	60
Loss of great toe	20
Loss of any other toe	8
Loss of two phalanges or joints of any other toe.....	7
Loss of phalanx or joint of great toe.....	10
Loss of phalanx or joint of any other toe.....	6

Adjustment of weekly payments, &c, under Principal Act.

114.—(1.) Where, immediately before the date of commencement of this Part, a person was receiving weekly payments under the *Commonwealth Workmen's Compensation Act 1912* or was receiving, or was entitled to receive, weekly payments in accordance with the First Schedule to the Principal Act, he is, from and including that date, entitled to receive weekly payments in accordance with the Principal Act as amended by this Part.

(2.) Where, before the date of commencement of this Part, an employee sustained an injury or contracted a disease in respect of which weekly payments in accordance with the First Schedule to the Principal Act would have been payable immediately before that date but for the fact that he was not then incapacitated for work or but for the operation of clause (ii) of sub-paragraph (b) of paragraph (1A.) of that Schedule, and on or after that date he becomes incapacitated for work as a result of the injury or disease or that clause ceases to have effect in relation to him, weekly payments in respect of that incapacity shall be in accordance with the Principal Act as amended by this Part.

(3.) Where, on or after the date of commencement of this Part, death results from an injury or a disease that was sustained or contracted before that date and in respect of which compensation was payable under the Principal Act, compensation shall be paid in respect of that death in accordance with the Principal Act as amended by this Part.

(4.) Where, immediately before the date of commencement of this Part, an employee was receiving, was entitled to receive, or, but for the operation of clause (ii) of sub-paragraph (b) of paragraph (1A.) of the First Schedule to the Principal Act, would have been entitled to receive, weekly payments in accordance with that Schedule in respect of an injury or injuries sustained or a disease contracted before that date, the provisions of section 13 of the Principal Act as amended by this Part apply in relation to the injury, injuries or disease.

(5.) The amendments made by sections 110 and 113 of this Act apply in relation to an injury sustained on or after the date of commencement of this Part notwithstanding that the accident or disease that caused the injury occurred before that date.

(6.) Expressions used in this section have the same respective meanings as in the Principal Act.

PART IX.—MISCELLANEOUS.

Jurisdiction of courts with respect to extraterritorial offences.

115.—(1.) This section applies in relation to offences against this Act committed outside Australia.

(2.) Subject to the succeeding provisions of this section, the several courts of the States are invested with federal jurisdiction, and jurisdiction is conferred on the several courts of the Territories of the Commonwealth not forming part of the Commonwealth, with respect to offences in relation to which this section applies.

(3.) The jurisdiction invested in, or conferred on, courts by the last preceding sub-section is invested or conferred within the limits (other than limits having effect by reference to the places at which offences are committed) of their several jurisdictions, whether those limits are as to subject-matter or otherwise.

(4.) Jurisdiction with respect to an offence is not conferred by this section on a court of a Territory of the Commonwealth not forming part of the Commonwealth unless the offence was committed in that Territory.

(5.) Subject to this section, the *Judiciary Act* 1903-1969 applies in relation to offences in relation to which this section applies.

Moneys paid to Commissioner for benefit of person.

116.—(1.) Where any moneys are payable under this Act to an employee who is under a legal disability, the moneys shall be paid to, or in accordance with the directions of, the Commissioner for the benefit of the employee and, when so paid, shall, for the purposes of this Act other than this section, be deemed to have been paid to the employee.

(2.) Where moneys are held by the Commissioner under this Act for the benefit of a person, the Commissioner shall, subject to the next two succeeding sub-sections, invest the moneys in any manner for the time being allowed by an Act, a State Act or an Ordinance of a Territory of the Commonwealth for the investment of trust moneys, and income resulting from any such investment shall be deemed to form part of the first-mentioned moneys.

(3.) The Commissioner may, in his discretion, pay any moneys referred to in the last preceding sub-section to the person or in accordance with the directions of the person or apply the moneys, in such manner as he thinks fit, for the benefit of the person.

(4.) Where moneys are held by the Commissioner for the benefit of an employee who is under a legal disability, the Commissioner shall, when the employee ceases to be under a legal disability, pay the moneys to the employee or in accordance with the directions of the employee or, if the moneys have been invested, deal with the investments in accordance with the directions of the employee.

Provisions applicable on death of beneficiary.

117.—(1.) Subject to this section, where a determination is made that an amount of compensation under this Act is payable to a person and the person dies before the amount is paid, the amount forms part of the estate of the person.

(2.) Subject to the succeeding provisions of this section, where the Commissioner holds any moneys or investments for the benefit of a person in pursuance of this Act and that person dies, those moneys or investments form part of the estate of that person.

(3.) Where, upon the death of the person, the amount of compensation referred to in sub-section (1.) of this section would be *bona vacantia*, that sub-section does not apply and, subject to sub-section (5.) of this section, if the amount of compensation is held by the Commissioner, he shall repay the amount to the Commonwealth.

(4.) Where, upon the death of the person, the moneys or investments referred to in sub-section (2.) of this section would be *bona vacantia*, that sub-section does not apply and, subject to the next succeeding sub-section, the Commissioner shall repay the moneys, or shall realize the investments and pay the proceeds of the realization, as the case may be, to the Commonwealth.

(5.) Nothing in any of the preceding sub-sections of this section prevents the Commissioner from making a determination under sub-section (4.) of section 20 of this Act that has the effect of rendering those sub-sections inoperative in a particular case.

Assignment, set-off or attachment of compensation.

118.—(1.) An assignment of any compensation payable under this Act is void as against the Commonwealth.

(2.) Except as provided by this Act, an amount payable by an employee or a dependant of a deceased employee to the Commonwealth shall not be set off against the amount of any compensation payable under this Act to the employee or for the benefit of the dependant.

(3.) Except as provided by the *Maintenance Orders (Commonwealth Officers) Act 1966* or the *Matrimonial Causes Act 1959-1966*, any compensation payable under this Act is not subject to attachment.

Recovery of overpayments.

119.—(1.) Where—

(a) an amount of compensation under this Act has been paid to a person in consequence of a false or misleading statement or representation or in consequence of a failure or omission to comply with a provision of this Act;

(b) an amount of compensation that has been paid to a person under this Act should not have been paid; or

(c) a person is liable to pay an amount to the Commonwealth under this Act,

the amount concerned is recoverable by the Commonwealth from the person as a debt due to the Commonwealth by action in a court of competent jurisdiction.

(2.) Where an amount is recoverable by the Commonwealth from a person in pursuance of the last preceding sub-section and an amount is payable under this Act to or for the benefit of that person, the first-mentioned amount may be deducted from the second-mentioned amount.

Compensation payable to locally engaged overseas employees.

120.—(1.) This section applies to employees who were engaged outside Australia for employment outside Australia and are performing the duties of their employment outside Australia.

(2.) Where a compensation scheme in force in a country other than Australia is applicable (whether by virtue of contributions made by the Commonwealth under the scheme or otherwise) in respect of the employment by the Commonwealth in that country of employees to whom this section applies, or of employees included in a class of such employees, or such a compensation scheme would, but for this Act, be so applicable, this Act does not apply in respect of the employment by the Commonwealth in that country of those employees, or of employees included in that class of employees, as the case may be.

(3.) Where a compensation scheme in force in a country other than Australia is not, and, if this Act had not been enacted, would not be, applicable in respect of the employment by the Commonwealth in that country of employees included in a class of employees to whom this section applies, but that compensation scheme is applicable (whether by virtue of contributions made by the Commonwealth under the scheme or otherwise) in respect of the employment by the Commonwealth in that

country of employees included in another class of employees to whom this section applies or that compensation scheme would, but for this Act, be so applicable, that compensation scheme shall be deemed to be applicable in respect of the employment by the Commonwealth in that country of employees included in the first-mentioned class of employees and the Commonwealth is, subject to the next succeeding sub-section, liable to provide benefits for employees included in that class of employees in accordance with that compensation scheme in respect of their employment by the Commonwealth in that country.

(4.) The regulations may provide that a compensation scheme referred to in the regulations, being a compensation scheme in force in a country other than Australia, is, for the purposes of the liability of the Commonwealth under the last preceding sub-section to provide benefits in accordance with that compensation scheme in respect of the employment by the Commonwealth in that country of employees included in a class of employees to whom this section applies, to have effect subject to such modifications or additions (if any) as are specified in the regulations, but so that the benefits provided will not be less favourable than the benefits provided under that compensation scheme in respect of the employment by the Commonwealth in that country of other employees to whom this section applies.

(5.) Where, in a country other than Australia, there is no compensation scheme in force that is, or, but for this Act, would be, applicable in respect of the employment by the Commonwealth in that country of employees to whom this section applies, but there is a compensation scheme in force in that country that is applicable in respect of persons employed by the Government of that country, or persons included in a class of such persons, that compensation scheme shall be deemed to be applicable in respect of the employment by the Commonwealth of those employees in that country and the Commonwealth is, subject to the next succeeding sub-section, liable to provide benefits for those employees in accordance with that compensation scheme in respect of that employment.

(6.) The regulations may provide that a compensation scheme referred to in the regulations, being a compensation scheme in force in a country other than Australia, is, for the purposes of the liability of the Commonwealth under the last preceding sub-section to provide benefits in accordance with that compensation scheme in respect of the employment by the Commonwealth of employees in that country, to have effect subject to such modifications or additions (if any) as are specified in the regulations but so that the benefits provided will not be less favourable than the benefits provided under that compensation scheme in respect of persons employed by the Government of that country.

(7.) Where, in a country other than Australia, there is no compensation scheme in force that is, or, but for this Act, would be, applicable in respect of the employment by the Commonwealth in that country of employees to whom this section applies, and there is no compensation scheme in force in that country that is applicable in respect of persons

employed by the Government of that country, the regulations may provide that a compensation scheme referred to in the regulations, being a compensation scheme in force in another country of comparable economic and social development, is to be deemed to be applicable in respect of the employment by the Commonwealth in the first-mentioned country of employees to whom this section applies, and the Commonwealth is, subject to the next succeeding sub-section, liable to provide benefits for those employees in accordance with that compensation scheme in respect of their employment by the Commonwealth in that first-mentioned country.

(8.) The regulations may provide that a compensation scheme referred to in the regulations, being a compensation scheme in force in a country other than Australia, is, for the purposes of the liability of the Commonwealth under the last preceding sub-section to provide benefits in accordance with that compensation scheme in respect of the employment by the Commonwealth of employees in another country, to have effect subject to such modifications or additions (if any) as are specified in the regulations, being modifications or additions that the Governor-General thinks reasonable having regard to the practice of reputable employers in that other country in relation to the provision of compensation benefits.

(9.) The Commonwealth is not liable to pay compensation under a provision of this Act other than this section in respect of the employment of an employee to whom this section applies in circumstances where a compensation scheme referred to in this section is, or is to be deemed to be, applicable in respect of that employment.

(10.) In this section, unless the contrary intention appears—

- (a) a reference to a country other than Australia shall be read as including a reference to a Territory of the Commonwealth not forming part of the Commonwealth;
- (b) a reference to the Government of a country other than Australia shall, in relation to such a Territory, be read as a reference to the Administration of that Territory;
- (c) a reference to compensation benefits shall be read as a reference to benefits for persons engaged in employment in the event of their death or incapacity by reason of injury or disease occurring in circumstances connected with that employment; and
- (d) a reference to a compensation scheme shall be read as a reference to a scheme (whether constituted by a law or not) for the provision of compensation benefits.

Double benefit.

121.—(1.) In this section, “employer” means the Commonwealth or a prescribed authority of the Commonwealth.

(2.) If a person being an employer has paid compensation under this Act to or in respect of an employee in relation to an injury or a loss of, or damage to, property, another person being an employer is not liable

to pay compensation under this Act to or in respect of that employee in relation to that injury or that loss of, or damage to, property, as the case may be.

(3.) An employer is not liable to pay compensation under this Act to or in respect of an employee in relation to an injury or a loss of, or damage to, property if compensation has been paid to or in respect of that employee in relation to that injury or that loss of, or damage to, property, as the case may be, under a law of a State or Territory of the Commonwealth or of a country other than Australia.

(4.) If, after any compensation has been paid by an employer under this Act to or in respect of an employee in relation to an injury or a loss of, or damage to, property, any compensation is paid under a law of a State or Territory of the Commonwealth or of a country other than Australia to or in respect of that employee in relation to that injury or that loss of, or damage to, property, as the case may be, the employer may recover the amount of the first-mentioned compensation in any court of competent jurisdiction from the person to whom it was paid as a debt due to the employer.

(5.) The Commissioner may require a claimant for compensation to furnish to the Commissioner a statutory declaration stating whether any compensation has been paid to or in respect of the claimant under a law of a State or Territory of the Commonwealth, or under a law of a country other than Australia, in respect of the injury or loss of, or damage to, property, as the case may be, to which the claim relates.

(6.) Where a claimant for compensation refuses or fails to furnish a statutory declaration to the Commissioner in accordance with a requirement under the last preceding sub-section, his right to compensation under this Act in respect of the injury or loss of, or damage to, property to which the claim relates, and his right to institute or continue any proceedings under this Act in relation to that compensation, are suspended until the statutory declaration is furnished.

(7.) Where a claimant's right to compensation is suspended under the last preceding sub-section, compensation is not payable in respect of the period of the suspension.

Annual report.

122.—(1.) As soon as practicable after the end of each financial year, the Commissioner shall prepare and furnish to the Minister a report with respect to—

- (a) the number of injuries in respect of which determinations under this Act were made during that financial year, being determinations in pursuance of which payments of compensation were made during that financial year;
- (b) the number of injuries in respect of which determinations under this Act were made before that financial year, being determinations in pursuance of which payments of compensation were made during that financial year;

- (c) the total of the amounts of compensation under this Act that were paid during that financial year; and
- (d) any other prescribed matters.

(2.) For the purposes of the last preceding sub-section, two or more injuries to an employee that are sustained at the same time shall be treated as one injury.

(3.) The Minister shall cause the report to be laid before each House of the Parliament within fifteen sitting days of that House after the receipt of the report by the Minister.

Regulations.

123.—(1.) The Governor-General may make regulations, not inconsistent with this Act—

- (a) prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, prescribing—
 - (i) the form and content of claims, notices and other documents required to be prepared under or for the purposes of this Act;
 - (ii) the manner of service of notices and other documents for the purposes of this Act;
 - (iii) the practice and procedure of Compensation Tribunals; and
 - (iv) the practice and procedure of prescribed Courts under this Act; and
- (b) making provision for and in relation to fees and allowances to be paid by the Commonwealth to a medical referee or other medical practitioner who carries out, or is a member of a medical board that carries out, an examination under section 41, 42, 58 or 60 of this Act, not being a person who is an officer of the Public Service of the Commonwealth, of a State or of a Territory of the Commonwealth.

(2.) Strict compliance with the form of a claim, notice or other document prescribed for the purposes of sub-paragraph (i) of paragraph (a) of the last preceding sub-section is not required and substantial compliance is sufficient.

(3.) At any time after this Act receives the Royal Assent and before the proclaimed date regulations may be made under this Act as if the whole of this Act had come into operation on the day on which this Act received the Royal Assent but regulations so made (other than regulations prescribing a salary, allowance or other remuneration) shall not come into operation before the proclaimed date.

THE SCHEDULES

FIRST SCHEDULE

Section 4.

Commonwealth Employees' Compensation Act 1930
Commonwealth Employees' Compensation Act 1944
Commonwealth Employees' Compensation Act 1948
Commonwealth Employees' Compensation Act 1951
Commonwealth Employees' Compensation Act 1954
Commonwealth Employees' Compensation Act 1956
Commonwealth Employees' Compensation Act 1959
Commonwealth Employees' Compensation Act 1962
Commonwealth Employees' Compensation Act 1964
Commonwealth Employees' Compensation Act 1967
Commonwealth Employees' Compensation Act 1968
Commonwealth Employees' Compensation Act 1969
Commonwealth Employees' Compensation Act 1970

SECOND SCHEDULE

Sections 18 and 73.

OATH

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of and that I will faithfully and impartially perform the duties of that office.

SO HELP ME GOD!

AFFIRMATION

I, A.B., do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of and that I will faithfully and impartially perform the duties of that office.

THIRD SCHEDULE

Section 24.

OATH

I, A.B., do swear that I will faithfully and impartially exercise and perform the powers and functions delegated to me by the Commissioner for Employees' Compensation.

SO HELP ME GOD!

AFFIRMATION

I, A.B., do solemnly and sincerely promise and declare that I will faithfully and impartially exercise and perform the powers and functions delegated to me by the Commissioner for Employees' Compensation