

**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE
LEGISLATION COMMITTEE**

SUBMISSION

**Inquiry into aspects of the Veterans' Entitlement Act and
the Military Compensation Scheme (MCRS)**

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Organisation making submission	Department of Veterans' Affairs
Postal address	P O Box 21 Woden ACT 2606
Location (if required)	
Contact person	Mr Perry Phillips Acting Director, Policy Eligibility and Research
Telephone	
Fax	
e-mail address	Perry.Phillips@dva.gov.au
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The Secretary
Senate Foreign Affairs, Defence and Trade Committee
Suite S1.57
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Inquiry into aspects of the *Veterans' Entitlements Act 1986* and the Military Compensation Scheme (MCRS)

This submission is to assist the Senate Foreign Affairs, Defence and Trade Committee in its enquiry into the compensation offsetting arrangements in the *Veterans' Entitlements Act 1986* (VEA) as they are applied to lump sum compensation payments made under the *Safety, Rehabilitation and Compensation Act 1988* (SRCA).

Eligibility

Members of the Australian Defence Force (ADF) are entitled to claim compensation from the Commonwealth of Australia where their employment in the ADF causes or aggravates illness or injury.

Until 7 December 1972, members were covered for compensation in respect of a given period of service under one of two compensation schemes established by the Commonwealth. In respect of deployments to conflicts, such as Korea or Vietnam, compensation coverage was provided under the Repatriation Act 1920 (the antecedent legislation to the VEA). In respect of other periods of service, compensation was provided under the *Commonwealth Employees' Compensation Act 1930* and later the *Compensation (Commonwealth Government Employees) Act 1971* (the antecedent legislation to the SRCA).

Dual eligibility

For service on and from 7 December 1972, members of the ADF became eligible to claim compensation under both Schemes in respect of peacetime service. This was introduced as part of measures to promote service in the ADF and retain existing members with their skills and knowledge during peacetime or peacekeeping service. For most members, dual eligibility ceased on 6 April 1994 after which a new military compensation scheme was introduced.

From 21 June 1994 the offsetting provisions in respect of peacetime service that are in Division 4 of Part IV of the VEA, were incorporated in Division 5A of Part II in respect of other service covered by the VEA. Copies of these divisions are enclosed.

Dual eligibility still exists for certain members:

- those who enlisted prior to 22 May 1986 and who have served continuously
- those who since 6 April 1994 have rendered operational, warlike, peacekeeping, hazardous or non-warlike service in respect of the periods of such service.

Dependants of deceased ADF members are similarly able to claim compensation subject to similar offsetting principles. For simplicity this paper will address only the position of living members of the ADF.

At present there are some 7,600 individuals whose pensions are offset and this number is slowly growing.

No double compensation

At the time that 'dual eligibility' to claim compensation was introduced it was acknowledged that the more beneficial scheme could not be predicted in advance and would depend on an individual's circumstances at the time a claim was made.¹ However, there remained an underlying principle that a person should not be compensated twice for the same loss.

To preclude double compensation, measures were introduced into the *Repatriation Act 1920* to reduce (or limit) the amount of fortnightly disability pension paid for an incapacity where compensation had been paid for that incapacity from another source. These offsetting provisions were carried forward in Part IV of the VEA which contains the compensation provisions for peacetime, peacekeeping and hazardous service.

Compensation under the VEA is paid by way of a fortnightly disability pension that is indexed and payable for the life of the veteran. Where periodic compensation payments are made from another source for the same incapacity, they are a direct deduction from (or limitation on) the amount of disability pension that may be paid. Where other compensation is in the form of a lump sum, it is the fortnightly equivalent of that lump sum that is the direct deduction from a disability pension.

Equivalent value of a lump sum

The VEA does not contain any formula for determining the fortnightly equivalent of a lump sum of compensation. Instead, the legislation refers to a fortnightly amount determined by, or in accordance with, the instructions of, the Commonwealth Actuary, to be the equivalent of a lump sum equal to that lump sum payment.

¹ Undated (Circa May 1973) "Re-Establishment Benefits—Report by Interdepartmental Committee on Implementation"

Actuary's instructions

A copy of the Commonwealth Actuary's instructions are attached. The instructions include a table that shows the fortnightly amount of indexed pension that is equivalent to a lump sum of \$10,000, for a given age and gender. The amounts in the table represent the starting point of a fortnightly pension, which is payable for life and indexed at the same time and by the same factor that applies to disability pensions, and which has an actuarial present value of \$10,000.

The fortnightly equivalent provided in the table is scaled pro rata to the actual lump sum received by a veteran, to determine the starting point in any particular case.

In devising the table, the Actuary has advised that he adopted the same principles that underpin lifetime annuities. A life insurance company will pay an annuity for life, in exchange for an up front lump sum premium. A lifetime annuity is payable for the life of the annuitant. The amount of the annuity depends on the amount of the premium and the age and gender of the annuitant. It also depends on certain assumptions, particularly the mortality of the annuitant and the rate of interest to be earned on the invested lump sum. The higher the assumed mortality rates, the larger the amount of the annuity. This is because, on average, annuity payments would be expected to be spread over a shorter period. Similarly, the higher the assumed interest rate, the larger the amount of the annuity. This is because the life insurance company expects to have more money available to make annuity payments. Since interest is expected to be earned on the invested lump sum, the sum of the annuity payments over the lifetime of the annuitant is expected to be more than the initial lump sum, often considerably more.

The Actuary has therefore devised a table which identifies the commencement value of an indexed pension that would be payable for life, in exchange for a lump sum of \$10,000. Where a veteran receives a lump sum, an annuity of equal actuarial value payable for the life of the veteran, is not payable. This equivalent actuarial value is the amount by which a veteran's disability pension is reduced.

A simple example provided by the Commonwealth Actuary may help to illustrate the operation of the arrangements:

Male veteran aged 40.

1. Granted a fortnightly disability pension, initially \$250.00 per fortnight.
2. Receives a compensation lump sum of \$20,000.

The relevant factor in the Actuary's table is 17.246.

Scaled up for the actual lump sum received, this = (20,000/10,000) x 17.246
 = 2 x 17.246
 = 34.492

Therefore, the initial limited pension = 250.00 – 34.49
 = 215.51

The veteran would receive a lump sum of \$20,000 plus a limited fortnightly, indexed pension of \$215.51. This package is actuarially equivalent to a full fortnightly, indexed pension of \$250.00.

Perceptions of repayment

From the point of view of the Commonwealth, payment of a compensation lump sum discharges a lifetime obligation to the member. Some members, by virtue of their eligible service, may also be paid compensation by way of a disability pension under the VEA. However, as double compensation cannot be paid, a member may only receive a disability pension payment that represents the marginal benefit of the VEA over the SRCA or other scheme that provided the lump sum of compensation.

Lump sum compensation payments are not loans or advances and therefore there is no question that they are repayable by deductions from a disability pension or in any other way.

Conclusion

The system of offsetting has not been designed as a loan repayment system. It is, therefore, inappropriate to think of it in this way. Rather, it represents the exchange of one asset for another of actuarially equivalent value. In effect, a lifetime pension is exchanged for a lump sum which has the same actuarial present value.

It would, in principle, be possible to restructure the offsetting arrangements so that they did operate in a similar way to a loan. However, this would lead to:

- Deductions from disability pension generally being higher (in the early “repayment” years) than they are under the current arrangement.
- There being a sharp increase in the net pension payable at the time the “loan” was completely discharged—that is, the net disability pension would not progress smoothly over the life of the veteran
- Recovering amounts from the estates of veterans who died before paying their “loan” was fully repaid.

The current system provides a net disability pension which is predictable over the lifetime of the veteran.

Neil Johnston
SECRETARY

May 2003

Division 5A—Effect of certain compensation payments on rates of pension

30A This Division does not apply to certain payments

This Division does not apply to:

- (a) a periodic payment or a lump sum payment referred to in paragraph 26(1)(b) or (2)(b) or subsection 30(3), whether the payment was made before or is made after the commencement of this section; or
- (b) an additional death benefit, or a severe injury adjustment, paid on or after 10 June 1997 in relation to a member of the Forces, or a member of a Peacekeeping Force, under a determination made under section 58B of the *Defence Act 1903*; or
- (c) an act of grace payment made on or after 10 June 1997 in respect of the death or injury of a member of the Forces, or a member of a Peacekeeping Force, where:
 - (i) the death or injury occurred on or after 7 April 1994 and before 10 June 1997; and
 - (ii) an additional death benefit, or a severe injury adjustment, would have been payable in relation to the member under a determination referred to in paragraph (b) if the death or injury had occurred on or after 10 June 1997.

30B Interpretation

- (1) In this Division, unless the contrary intention appears:

compensation includes:

- (a) any payment in the nature of compensation; and
- (b) any damages recoverable at law from the Commonwealth, a State, a Territory or any other person (whether within or outside Australia), in respect of injury to, or the death of, a person; and
- (c) any amount paid under a compromise or settlement of a claim for damages referred to in paragraph (b);

but does not include any amount that represents expenses incurred in medical or hospital treatment.

- (2) For the purposes of this Part, a payment of arrears of periodic compensation payments is not a lump sum compensation payment.

Note: For lump sum payments of compensation see section 30C. For periodic payments of compensation see section 30D.

- (3) In sections 30G and 30H:

damages does not include an amount that has been paid under a notice under section 51 of the *Safety, Rehabilitation and Compensation Act 1988*.

(4) In sections 30L and 30M:

international organisation means:

- (a) an organisation:
 - (i) of which 2 or more countries, or the governments of 2 or more countries, are members; or
 - (ii) that is constituted by persons representing 2 or more countries, or representing the governments of 2 or more countries; or
- (b) an organisation that is:
 - (i) an organ of, or office within, an organisation described in paragraph (a); or
 - (ii) a commission, council or other body established by an organisation so described or such an organ; or
 - (iii) a committee, or subcommittee of a committee, of an organisation described in paragraph (a), or of such an organ, council or body.

30C Lump sum compensation payment

(1) If:

- (a) a lump sum payment of compensation is made to a person who is a veteran or a dependant of the veteran; and
- (b) the compensation payment is paid in respect of the incapacity of the veteran from injury or disease or the death of the veteran; and
- (c) the person is receiving, or is subsequently granted, a pension under this Part in respect of the incapacity from that injury or disease or the death;

the following provisions have effect:

- (d) the person is taken to have been, or to be, receiving payments of compensation at a rate per fortnight determined by, or under the instructions of, the Commonwealth Actuary;
- (e) the person is taken to have been, or to be, receiving those payments for the period of the person's life determined by, or under the instructions of, the Commonwealth Actuary;
- (f) the period referred to in paragraph (e) begins:
 - (i) on the day that lump sum payment is made to the person; or
 - (ii) on the day the pension becomes payable to the person;whichever is the earlier day.

Note 1: Pensions under this Part are payable in respect of the incapacity of a veteran from a war-caused injury or disease or in respect of the death of the veteran (see section 13).

Note 2: A payment of arrears of periodic compensation is not a lump sum compensation payment (see subsection 30B(2)).

Lump sum payment—Safety, Rehabilitation and Compensation Act (section 137)

(2) If:

- (a) a lump sum payment is made under section 137 of the *Safety, Rehabilitation and Compensation Act 1988* to a person who is a veteran or a dependant of the veteran; and
- (b) the payment is made in respect of the incapacity of the veteran from injury or disease or the death of the veteran; and

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- (c) the person is receiving, or is subsequently granted, a pension under this Part in respect of the incapacity from that injury or disease or the death;
the following provisions have effect:
- (d) the person is taken to have been, or to be, receiving payments of compensation at a rate per fortnight determined by, or under the instructions of, the Commonwealth Actuary;
- (e) the person is taken to have been, or to be, receiving those payments for the period of the person's life determined by, or under the instructions of, the Commonwealth Actuary;
- (f) the period referred to in paragraph (e) begins:
- (i) on the day that lump sum compensation payment is made to that person; or
 - (ii) on the day the pension becomes payable to the person;
- whichever is the later day.

Note: Pensions under this Part are payable in respect of the incapacity of a veteran from a war-caused injury or disease or in respect of the death of the veteran (see section 13).

Lump sum payment—Safety, Rehabilitation and Compensation Act (section 30)

- (3) If:
- (a) a lump sum payment is made under section 30 of the *Safety, Rehabilitation and Compensation Act 1988* to a person who is a veteran or a dependant of the veteran; and
 - (b) the payment is made in respect of the incapacity of the veteran from injury or disease or the death of the veteran; and
 - (c) the person is receiving, or is subsequently granted, a pension under this Part in respect of the incapacity from that injury or disease or the death;
the following provisions have effect:
- (d) the person is taken to have been, or to be, receiving payments of compensation at a rate per fortnight determined by, or under the instructions of, the Commonwealth Actuary;
 - (e) the person is taken to have been, or to be, receiving those payments for the period until the person reaches 65;
 - (f) the period referred to in paragraph (e) begins:
 - (i) on the day that lump sum payment is made to the person; or
 - (ii) on the day the pension becomes payable to the person;whichever is the later day.

Note: Pensions under this Part are payable in respect of the incapacity of a veteran from a war-caused injury or disease or in respect of the death of the veteran (see section 13).

Pension payable to one person

- (4) Subject to subsection (6), if:
- (a) a person is taken to be in receipt of payments of compensation at a particular rate per fortnight under subsection (1), (2) or (3); and
 - (b) but for this subsection, pension referred to in paragraph (1)(c), (2)(c) or (3)(c) would be payable to the person at a particular rate per fortnight;
- after the lump sum payment is made, the rate per fortnight of the pension is to be reduced by the rate per fortnight of compensation.

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- (5) If, under subsection (4), the rate per fortnight of compensation is equal to or exceeds the rate per fortnight of pension, pension is not payable to the person.

Pension payable to 2 or more persons

- (6) If:
- (a) a lump sum payment is made to a person or persons in respect of the incapacity of a veteran from injury or disease or the death of the veteran; and
 - (b) the person or persons are taken to be in receipt of compensation under subsection (1), (2) or (3); and
 - (c) apart from this subsection, pensions under this Part in respect of the incapacity of the veteran from that injury or disease, or that death, would be payable to 2 or more persons at particular rates per fortnight;
- after the lump sum payment is made, the sum of those rates per fortnight of pensions is to be reduced by the rate per fortnight of compensation that the person is, or the sum of the rates per fortnight of compensation that the persons are, taken to be in receipt of.

Note: Subsections (8), (9) and (10) set out how the reduction is to be made.

- (7) If, under subsection (6), the rate or the sum of the rates per fortnight of compensation is equal to or exceeds the sum of the rates per fortnight of pensions, pensions are not payable to the persons.

How reduction is to be made

- (8) In giving effect to subsection (6), if:
- (a) pensions are payable to 2 or more persons; and
 - (b) one pension is to be preferred to another under subsection (12);
- the preferred pension is not to be reduced until the other pension ceases to be payable because its rate per fortnight is reduced to nil.
- (9) If:
- (a) the rate of a pension or the rates of 2 or more pensions are reduced to nil under subsection (8); and
 - (b) there are 2 or more pensions that are not to be preferred to each other;
- the reduction in the rate per fortnight for each of those pensions is to be worked out using the following formula:

$$\frac{\text{Pension to be reduced}}{\text{Pensions payable}} \times \text{Excess compensation payable}$$

where:

pension to be reduced is the rate per fortnight of the pension to be reduced.

pensions payable is the sum of the rates per fortnight of the pensions referred to in paragraph (b).

excess compensation payable is the rate per fortnight of compensation that is payable after the pension or pensions referred to in paragraph (a) are reduced to a nil rate.

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(10) If:

- (a) pensions are payable to 2 or more persons; and
- (b) subsections (8) and (9) do not apply;

the reduction in the rate per fortnight for each pension is to be worked out using the following formula:

$$\frac{\text{Pension to be reduced}}{\text{Total Pensions payable}} \quad \times \quad \text{Total compensation payable}$$

where:

pension to be reduced is the rate per fortnight of the pension to be reduced.

total pensions payable is the sum of the rates per fortnight of pensions payable to the persons.

total compensation payable is the sum of the rates per fortnight of compensation that the persons are taken to be in receipt of.

(11) If:

- (a) an amount of damages payable to a veteran, or to a dependant of a veteran, is paid to the Commonwealth under section 30G or 30H; or
- (b) the liability of the Commonwealth to pay damages to a veteran or to a dependant of a veteran, is, under section 30K, taken to have been discharged to the extent of a particular amount;

subsection (1) of this section applies to the veteran or the dependant as if pension commences to be payable, only after the veteran or dependant receives payments by way of instalments of pension equal to the amount referred to in paragraph (a) or (b).

Preferred pensions

(12) For the purposes of this section:

- (a) a pension payable under this Part to the veteran is to be preferred to such a pension payable to a dependant of the veteran; and
- (b) a pension payable under this Part to the spouse of a veteran is to be preferred to such a pension payable to a child of the veteran; and
- (c) a pension payable under this Part to the widow or widower of a deceased veteran is to be preferred to such a pension payable to a child of the veteran; and
- (d) a pension payable under this Part to an older child of a veteran is to be preferred to such a pension payable to a younger child of the veteran.

(13) For the purposes of this section, a payment by way of compensation made on behalf of, or for the benefit of, a person is taken to have been made to the person.

30D Periodic payment of compensation

(1) If:

- (a) periodic payments of compensation are made to a person who is a veteran or a dependant of the veteran; and

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- (b) the compensation payments are made in respect of the incapacity of the veteran from injury or disease or the death of the veteran; and
 - (c) the person receives, or is subsequently granted, a pension under this Part in respect of the incapacity from that injury or disease or the death;
- the rate per fortnight of the person's pension that would, apart from this subsection, be payable to the person for the periodic payments period is to be reduced by the rate per fortnight of the periodic compensation.

Note 1: For *periodic payments period* see subsection (10).

Note 2: Pensions under this Part are payable in respect of the incapacity of a veteran from a war-caused injury or disease or in respect of the death of the veteran (see section 13).

- (2) If, under subsection (1), the rate per fortnight of the periodic compensation is equal to or exceeds the rate per fortnight of pension, pension is not payable to the person.

Pension payable to 2 or more persons

- (3) If:
 - (a) periodic payments of compensation are made to a person or persons in respect of the incapacity of a veteran from injury or disease or the death of the veteran; and
 - (b) apart from this subsection, pensions under this Part in respect of the incapacity of the veteran from that injury or disease, or the death of the veteran, would be payable to 2 or more persons for the periodic payments period at particular rates per fortnight;the sum of those rates per fortnight of pensions for the periodic payments period is to be reduced by the rate per fortnight of the periodic compensation or the sum of the rates per fortnight of the periodic compensation.

Note: Subsections (5), (6) and (7) set out how the reduction is to be made.

- (4) If, under subsection (3), the rate or the sum of the rates per fortnight of periodic compensation is equal to or exceeds the sum of the rates per fortnight of pensions, pensions are not payable to the persons.

How reduction is to be made

- (5) In giving effect to subsection (3), if:
 - (a) pensions are payable to 2 or more persons; and
 - (b) one pension is to be preferred to another under subsection (8);the preferred pension is not to be reduced until the other pension ceases to be payable because its rate per fortnight is reduced to nil.
- (6) In giving effect to subsection (3), if:
 - (a) the rate of a pension or the rates of 2 or more pensions are reduced to nil under subsection (5); and
 - (b) there are 2 or more pensions that are not to be preferred to each other;the reduction in the rate per fortnight for each of those pensions is to be worked out using the following formula:

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$$\frac{\text{Pension to be reduced}}{\text{Pensions payable}} \times \text{Excess compensation payable}$$

where:

pension to be reduced is the rate per fortnight of the pension to be reduced.

pensions payable is the sum of the rates per fortnight of the pensions referred to in paragraph (b).

excess compensation payable is the rate per fortnight of periodic compensation that is payable after the pension or pensions referred to in paragraph (a) are reduced to a nil rate.

(7) If:

(a) pensions are payable to 2 or more persons; and

(b) subsections (5) and (6) do not apply;

the reduction in the rate per fortnight for each pension is to be worked out using the following formula:

$$\frac{\text{Pension to be reduced}}{\text{Pensions payable}} \times \text{Ccompensation payable}$$

where:

pension to be reduced is the rate per fortnight of the pension to be reduced.

pensions payable is the sum of the rates per fortnight of pensions payable to the persons.

compensation payable is the sum of the rates per fortnight of periodic compensation that is payable to the persons.

Preferred pensions

(8) For the purposes of this section:

(a) a pension payable under this Part to the veteran is to be preferred to such a pension payable to a dependant of the veteran; and

(b) a pension payable under this Part to the spouse of a veteran is to be preferred to such a pension payable to a child of the veteran; and

(c) a pension payable under this Part to the widow or widower of a veteran is to be preferred to such a pension payable to a child of the veteran; and

(d) a pension payable under this Part to an older child of a veteran is to be preferred to such a pension payable to a younger child of the veteran.

(9) For the purposes of this section, a payment by way of compensation made on behalf of, or for the benefit of, a person is taken to have been made to the person.

(10) In this section, *periodic payments period* means:

(a) in relation to a series of periodic payments—the period in respect of which the payments are, or are to be made; and

- (b) in relation to a payment of arrears of a series of periodic payments—the period in respect of which those periodic payments would have been made if they had not been made by way of an arrears payment.

30E Proceedings against third party

If:

- (a) a pension is payable or has been paid under this Part in respect of:
 - (i) the incapacity of a veteran from a war-caused injury or disease; or
 - (ii) the death of a veteran; and
 - (b) a person other than the Commonwealth appears legally liable to pay damages in respect of the incapacity of the veteran from that injury or disease or the death of the veteran; and
 - (c) the veteran, a dependant of the veteran or a person on behalf of the dependant has:
 - (i) not instituted proceedings against the person for the recovery of damages for the incapacity or death; or
 - (ii) not properly prosecuted proceedings that have been instituted; or
 - (iii) discontinued proceedings that have been instituted;
- the Commission may, by written notice, request the veteran or dependant:
- (d) to institute proceedings or new proceedings against the person; or
 - (e) properly to prosecute proceedings against the person.

30F Failure to comply with Commission's request made under section 30E

- (1) If, within a reasonable time after a notice under section 30E is given to a veteran or a dependant of a veteran, the veteran or dependant:
 - (a) refuses or fails to institute proceedings; or
 - (b) discontinues proceedings that have been instituted;the Commission may, on behalf of the veteran or dependant, institute proceedings or new proceedings against the person for recovery of damages in respect of the incapacity or death.
- (2) If, within a reasonable time after a notice is given, a veteran or a dependant of a veteran fails to prosecute properly proceedings that have been instituted, the Commission may take over the conduct of the proceedings.
- (3) If a veteran or a dependant of a veteran institutes proceedings under a notice but refuses or fails to prosecute the proceedings properly, the Commonwealth may take over the conduct of the proceedings.

Commonwealth liability to pay costs

- (4) The Commonwealth is liable to pay all the plaintiff's costs of, or incidental to, the proceedings. The Commonwealth is not liable to pay costs that the plaintiff unreasonably incurs.

Commonwealth may settle etc. proceedings

- (5) If the Commonwealth:
 - (a) institutes proceedings; or
 - (b) takes over the conduct of the proceedings;

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the Commonwealth may:

- (c) settle the proceedings, with or without obtaining judgment; and
- (d) if a favourable judgment is given in favour of the plaintiff—take such steps as are necessary to enforce that judgment.

Veteran or dependant of veteran must sign all documents relating to proceedings

- (6) The veteran, or a dependant of the veteran, must sign any document relevant to the proceedings, including settlement of the proceedings, that the Commonwealth requires the veteran or the dependant to sign.
- (7) If the veteran or the dependant fails to sign any such document, the court or tribunal in which the proceedings are being held may direct that the document be signed on his or her behalf by a person appointed by the court or tribunal for that purpose.

30G Payment of damages by third party to Commonwealth

- (1) Subject to subsection (2), if:
 - (a) a pension is payable or has been paid under this Part in respect of:
 - (i) the incapacity of a veteran from a war-caused injury or disease; or
 - (ii) the death of the veteran; and
 - (b) a person other than the Commonwealth appears to be legally liable to pay damages in respect of the incapacity of the veteran from that injury or disease or the death of the veteran;

the Commission may, by written notice to the person, require the person to pay to the Commonwealth a specified amount of the damages.

Note: Damages in this section do not include certain amounts paid under the *Safety, Rehabilitation and Compensation Act 1988* (see subsection 30B(3)).

- (2) The specified amount must not exceed the total amount of pension paid under this Part, up to the time the payment of damages is made to the Commonwealth, to the veteran or dependant in respect of the incapacity or death.
- (3) The person must comply with the notice if:
 - (a) the person agrees to pay damages to a veteran or dependant in respect of the incapacity or the death; or
 - (b) damages against the person are awarded to the veteran or dependant in proceedings instituted in respect of the incapacity or death.

30H Payment of damages by third party where agreement, or an award against the person, to pay damages has been made

- (1) Subject to subsection (4), if:
 - (a) pension is payable or has been paid under this Part in respect of:
 - (i) the incapacity of a veteran from a war-caused injury or disease; or
 - (ii) the death of a veteran; and
 - (b) an amount of damages is payable by a person other than the Commonwealth in respect of the incapacity of the veteran from that injury or disease or the death of the veteran because:
 - (i) the person agreed to pay such damages; or

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(ii) damages against the person were awarded to the veteran or dependant in proceedings instituted in respect of the incapacity or death; the Commission may, by written notice to the person, require the person to pay to the Commonwealth a specified amount of the damages.

Note: Damages in this section do not include certain amounts paid under the *Safety, Rehabilitation and Compensation Act 1988* (see subsection 30B(3)).

- (2) The specified amount must not exceed the total amount of pension paid under this Part, up to the time the payment of damages is made to the Commonwealth, to the veteran or dependant in respect of the incapacity or death.
- (3) The person must comply with the notice.

Effect of notice where damages already paid

- (4) If, before a notice under subsection (1) was received by a person, the person had paid to, or in respect of, the veteran or dependant the whole or any part of the damages to which the notice relates, then:
 - (a) if the whole of the damages had been paid—the notice has no force or effect; or
 - (b) if part of the damages had been paid—the specified amount of damages is the amount of damages that has not been paid.

30I Debt due to the Commonwealth

If a person fails to pay an amount to the Commonwealth under a notice under section 30G or 30H, the Commonwealth may recover the amount from the person as a debt due to the Commonwealth by action in a court of competent jurisdiction.

30J Discharge of liability

The payment of an amount to the Commonwealth under a notice under section 30G or 30H is, to the extent of the amount paid, a discharge of the liability of that person to the veteran or the dependant.

30K Discharge of liability of Commonwealth to pay damages

If:

- (a) pension is payable, or has been paid, under this Part in respect of:
 - (i) the incapacity of a veteran from a war-caused injury or disease; or
 - (ii) the death of a veteran; and
- (b) damages have been awarded against the Commonwealth:
 - (i) to a veteran in proceedings instituted to recover damages in respect of the incapacity of the veteran from that injury or disease; or
 - (ii) to a dependant of a deceased veteran in proceedings instituted to recover damages in respect of the death of the veteran; and

the liability of the Commonwealth to pay those damages (excluding any part of them that represents expenses incurred in medical or hospital treatment) is taken to have been discharged to the extent of the total of the amounts of the pension that have been paid to the veteran or the dependant.

30L Other payments of compensation

If:

- (a) any pension has been paid under this Part in respect of:
 - (i) the incapacity of the veteran from war-caused injury or disease; or
 - (ii) the death of the veteran; and
- (b) any compensation is paid:
 - (i) under the law of a country other than Australia; or
 - (ii) by, or under a scheme arranged by, an international organisation;to, or in respect of:
 - (iii) a veteran in respect of the incapacity of the veteran from that injury or disease; or
 - (iv) a dependant of a deceased veteran in respect of the death of the veteran;

the Commonwealth may recover from the veteran or dependant, by action in a court of competent jurisdiction, an amount equal to the amount of compensation paid that does not exceed the total of the pension paid under this Part to the veteran or dependant.

Note: For *international organisation* see subsection 30B(4).

30M Commission may require a statutory declaration

The Commission may, by notice in writing to a claimant or recipient of a pension under this Part, require the person to give the Commission, within a reasonable period specified in the notice, a statutory declaration stating whether any compensation:

- (a) has been paid to, or in respect of, the person; or
 - (b) has been claimed by, or in respect of, the person;
- under a law of a country other than Australia, or under a scheme arranged by an international organisation in respect of the same incapacity or death for which the person claims or receives a pension under this Part.

Note: For *international organisation* see subsection 30B(4).

30N Failure to comply with statutory declaration requirement

- (1) If a person refuses or fails to comply with a notice given under section 30M, the person's right:
 - (a) to pension under this Part in respect of the incapacity or death to which the notice relates; and
 - (b) to institute or take any proceedings under this Act in relation to that pension or a claim for that pension;is suspended until the statutory declaration has been given to the Commission.
- (2) If a person's right to pension under this Part is suspended under subsection (1), the person is not entitled to be paid pension under this Part for the period of the suspension.

30P Overpayments of pension

- (1) If:
 - (a) an amount of pension is payable or has been paid under this Part in respect of:
 - (i) the incapacity of the veteran from a war-caused injury or disease; or
 - (ii) the death of the veteran; and
 - (b) because of section 30C or 30D, that amount of pension was not payable to the veteran or dependant;an amount equal to the amount of pension paid is recoverable from the veteran or dependant.
- (2) The amount may be recovered, either in whole or in part, by deduction from any amount of pension payable under this Part to the veteran or dependant in respect of the incapacity or death of the veteran.
- (3) Subsection (2) does not prevent the recovery of the amount in a manner other than the one provided for in that subsection. An amount is not to be recovered as provided and also in a manner that is not provided for in subsection (2).

Division 4—Pension and other compensation

73A This Division does not apply to certain payments

This Division does not apply to:

- (a) an additional death benefit, or a severe injury adjustment, paid on or after 10 June 1997 in relation to a member of the Forces, or a member of a Peacekeeping Force, under a determination made under section 58B of the *Defence Act 1903*; or
- (b) an act of grace payment made on or after 10 June 1997 in respect of the death or injury of a member of the Forces, or a member of a Peacekeeping Force where:
 - (i) the death or injury occurred on or after 7 April 1994 and before 10 June 1997; and
 - (ii) an additional death benefit, or a severe injury adjustment, would have been payable in relation to the member under a determination referred to in paragraph (a) if the death or injury had occurred on or after 10 June 1997.

74 Payments by way of compensation or damages

- (1) In this section, *compensation* includes:
 - (a) any payment in the nature of compensation; and
 - (b) any damages recoverable at law (including any amount paid under a compromise or settlement of a claim for damages at law), whether from the Commonwealth, a State, a Territory or any other person (whether within or outside Australia), in respect of injury to, or the death of, a person;but does not include any amount that represents expenses incurred in medical or hospital treatment.
- (2) This section applies in relation to a member of the Forces, or a member of a Peacekeeping Force, in respect of the death of the member, or the incapacity of the member from a defence-caused injury or a defence-caused disease if:
 - (a) a person is entitled, or 2 or more persons are each entitled, to receive payments by way of compensation in respect of the death of the member or of the incapacity of the member from that injury or disease; and
 - (b) subject to this section, pension under this Part is being paid or is payable to a person, or to each of 2 or more persons, in respect of the death of the member or to the member in respect of the incapacity of the member from that injury or disease.
- (3) For the purposes of this section, where:
 - (a) a lump sum payment by way of compensation (other than a lump sum payment mentioned in paragraph (3A)(a) or (3B)(a)) is made:
 - (i) to a person, being a member of the Forces or a member of a Peacekeeping Force, in respect of the incapacity of the member from injury or disease;or

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- (ii) to a person, being a dependant of a member of the Forces or of a member of a Peacekeeping Force, in respect of the death of the member from injury or disease; and
- (b) that person is in receipt of, or is subsequently granted, a pension under this Part in respect of the incapacity of that member from that injury or disease, or the death of that member from that injury or disease, as the case may be; that person shall be deemed, by reason of that payment by way of compensation, to have been, or to be, in receipt of payments, by way of compensation, on and after:
 - (c) the date of commencement of the period in respect of which his or her pension is, or becomes, payable; or
 - (d) the date on which the lump sum payment is made;whichever is the earlier date, for the life of the person, at such rate per fortnight as is determined by, or in accordance with the instructions of, the Commonwealth Actuary, to be the equivalent of a lump sum equal to that lump sum payment and paid to the person on that earlier date.

(3A) In this section, if:

- (a) a lump sum payment is made under section 137 of the *Safety, Rehabilitation and Compensation Act 1988* to a person who is:
 - (i) a member of the Forces or a member of a Peacekeeping Force, in respect of the incapacity of the member from injury or disease; or
 - (ii) a dependant of a member of the Forces or of a member of a Peacekeeping Force, in respect of the death of the member from injury or disease; and
- (b) that person is in receipt of, or is subsequently granted, a pension under this Part in respect of that incapacity or death; the person is taken to have been, or to be, in receipt of payments of compensation:
 - (c) that is determined by, or under the instructions of, the Commonwealth Actuary to be equivalent to the amount of that lump sum payment; and
 - (d) at the rate per fortnight for the person's life determined by, or under the instructions of, the Commonwealth Actuary; and
 - (e) beginning:
 - (i) on the day that lump sum payment is made to that person; or
 - (ii) on the day the pension becomes payable to the person;whichever is the later day.

(3B) In this section, if:

- (a) a lump sum payment is made under section 30 of the *Safety, Rehabilitation and Compensation Act 1988* to a person who is:
 - (i) a member of the Forces or a member of a Peacekeeping Force, in respect of the incapacity of the member from injury or disease; or
 - (ii) a dependant of a member of the Forces or of a member of a Peacekeeping Force, in respect of the death of the member from injury or disease; and
- (b) that person is in receipt of, or is subsequently granted, a pension under this Part in respect of that incapacity or death; the person is taken to have been, or to be, in receipt of payments of compensation:
 - (c) that is determined by, or under the instructions of, the Commonwealth Actuary to be equivalent to the amount of that lump sum payment; and
 - (d) at the rate per fortnight determined by, or under the instructions of, the Commonwealth Actuary for the period until the person reaches 65; and

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- (e) beginning:
 - (i) on the day that the lump sum payment is made to that person; or
 - (ii) on the day the pension becomes payable to the person;whichever is the later day.
- (4) For the purposes of this section, a payment by way of compensation made on behalf of, or for the benefit of, a person shall be deemed to have been made to that person.
- (5) Where:
 - (a) an amount of damages payable to a member of the Forces or a member of a Peacekeeping Force, or to a dependant of such a member, is paid to the Commonwealth in pursuance of a notice under section 76; or
 - (b) the liability of the Commonwealth to pay damages to a member of the Forces or a member of a Peacekeeping Force or to a dependant of such a member, is, by virtue of section 77, to be deemed to have been discharged to the extent of a particular amount;subsection (3) of this section applies to and in relation to the member or dependant as if pension commenced to be payable, or commences to be payable, only after the member or dependant has received payments by way of instalments of pension aggregating the amount referred to in paragraph (a) or (b), whichever is applicable, of this subsection.
- (6) In the application of subsections (8) and (9) in respect of the death of a member of the Forces or a member of a Peacekeeping Force:
 - (a) if payments by way of compensation in respect of the death of the member are being made to 2 or more persons included in the relevant class of persons—a reference in those sections to the rate per fortnight at which compensation is payable in respect of the death of the member shall be read as a reference to the aggregate of the rates per fortnight at which those payments are being made; and
 - (b) if pensions under this Part in respect of the death of the member are being paid, or are payable, to 2 or more persons included in the relevant class of persons—a reference in those sections to the rate at which pension under this Part is payable in respect of the death of the member shall be read as a reference to the aggregate of the rates per fortnight at which those pensions are being paid or are payable.
- (7) For the purposes of subsection (6), the dependants of a member of the Forces or a member of a Peacekeeping Force constitute the relevant class of persons.
- (8) If, in a case where this section applies in respect of the death of a member of the Forces or a member of a Peacekeeping Force, or the incapacity of such a member from injury or disease, or both, the rate per fortnight at which compensation is payable in respect of the death or incapacity equals or exceeds the rate per fortnight at which pension under this Part is payable in respect of the death or incapacity, then, pension is not payable under this Part to any person in respect of the death of the member, or the incapacity of the member from that injury or disease, or both, as the case may be.
- (9) If, in a case where this section applies in respect of the death of a member of the Forces or a member of a Peacekeeping Force, or the incapacity of such a member from injury or disease, or both, the rate per fortnight at which pension under this

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Part, or the aggregate of the rates per fortnight at which pensions under this Part would, but for this subsection, be payable in respect of the death or incapacity exceeds the rate per fortnight at which compensation is payable in respect of the death or incapacity, then:

- (a) if a pension under this Part is being paid, or is payable, to one person only in respect of the death or incapacity of the member—the rate per fortnight at which that pension is payable; or
- (b) if pensions under this Part are being paid, or are payable, to 2 or more persons in respect of the death of the member—the aggregate of the rates per fortnight at which those pensions are payable;

is an amount per fortnight equal to the amount of that excess.

- (10) In giving effect to subsection (9) as between 2 pensions in a case where one is required by subsection (12) to be preferred to the other, the rate per fortnight of the pension that is to be so preferred shall not be reduced until the pension that is not to be so preferred has ceased to be payable by reason that its rate per fortnight has been reduced to nil.
- (11) In giving effect to subsection (9) as between 2 or more pensions in a case where subsection (10) does not apply, the rate per fortnight of each of those pensions shall be reduced by an amount per fortnight that bears the same proportion to the amount per fortnight of the reduction required to be made to all those pensions as the rate per fortnight of that pension before the reduction bears to the aggregate rate per fortnight of all those pensions before the reduction.
- (12) For the purposes of this section:
 - (a) a pension payable under this Part to the widow or widower of a member of the Forces or a member of a Peacekeeping Force who is deceased shall be preferred to such a pension payable to a child of the member; and
 - (b) a pension payable under this Part to a child of a member of the Forces or a member of a Peacekeeping Force shall be preferred to such a pension payable to a younger child of the member.

75 Proceedings against third party

- (1) Where:
 - (a) pension is, or has been, payable in respect of the incapacity of a member of the Forces or a member of a Peacekeeping Force from a defence-caused injury or a defence-caused disease or in respect of the death of such a member that was defence-caused;
 - (b) the incapacity from injury or disease, or the 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 or disease, or the death; and
 - (c) proceedings against that person for the purpose of recovering damages in respect of the injury or disease, or the death, have not been instituted by the member, or by or for the benefit of a dependant of the member, or have been so instituted but have been discontinued or have not been properly prosecuted;the Commission may, by notice in writing to the member or dependant, request the member 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.

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- (2) Where a member of the Forces or a member of a Peacekeeping Force or a dependant of such a member is requested, in accordance with subsection (1), to institute proceedings against a person:
 - (a) if the member 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 member or dependant for the recovery of damages in respect of the incapacity or death; or
 - (b) if the member or dependant, having instituted proceedings, fails properly to prosecute the proceedings—the Commonwealth may take over the conduct of the proceedings.
- (3) Where a member of the Forces or a member of a Peacekeeping Force, or a dependant of such a member, who is requested, in accordance with subsection (1), 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 the costs of or incidental to proceedings referred to in subsection (1), (2) or (3), 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 a member of the Forces or a member of a Peacekeeping Force or of a dependant of such a member, or takes over the conduct of proceedings that have been instituted in the name of such a member or of a dependant of such a member:
 - (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 member or dependant shall sign any document relevant to the proceedings, including the settlement of the proceedings, that a person acting in the proceedings on behalf of the Commonwealth requires that member or dependant to sign and, if he or she fails to sign any such document, the court or tribunal in which the proceedings are being taken may direct that the document be signed on his or her behalf by a person appointed by the court or tribunal for the purpose.

76 Payment of damages to Commonwealth

- (1) Where:
 - (a) a person other than the Commonwealth appears to be liable:
 - (i) to pay damages to a member of the Forces or a member of a Peacekeeping Force in respect of an injury or disease to the member; or
 - (ii) to pay damages to a dependant of a deceased member of the Forces or a deceased member of a Peacekeeping Force in respect of the death of the member; and

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- (b) pension under this Part is payable or has been paid to the member in respect of the incapacity of the member from that injury or disease or to the dependant in respect of the death of the member;

the Commission may, by notice in writing to the person, require the person, in the event of the person agreeing to pay damages to the member in respect of the injury or disease, or to pay damages to the dependant in respect of the death, or in the event of damages against the person being awarded to the member in proceedings instituted in respect of the injury or disease, 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 aggregate, at the time the payment is made to the Commonwealth, of the amounts of pension under this Part that have been paid to the member in respect of the incapacity of the member from that injury or disease, or to the dependant in respect of the death of the member, and the person shall comply with the notice.

- (2) Subject to subsection (3), where:

- (a) a person other than the Commonwealth has agreed:

- (i) to pay damages to a member of the Forces or a member of a Peacekeeping Force in respect of an injury suffered by, or a disease contracted by, the member; or
- (ii) to pay damages to a dependant of a deceased member of the Forces or member of a Peacekeeping Force in respect of the death of the member;

and pension under this Part is payable, or has been paid, to the member in respect of the incapacity of the member from that injury or disease or to the dependant in respect of the death of the member; or

- (b) damages against a person other than the Commonwealth have been awarded:

- (i) to a member of the Forces or member of a Peacekeeping Force in respect of an injury suffered by, or a disease contracted by, the member; or
- (ii) to a dependant of a deceased member of the Forces or member of a Peacekeeping Force in respect of the death of the member;

and pension under this Part is payable, or has been paid, to the member in respect of the incapacity of the member from that injury or disease or to the dependant in respect of the death of the member;

the Commission 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 aggregate, at the time the payment is made to the Commonwealth, of the amounts of pension under this Part that have been paid to the member in respect of the incapacity of the member from that injury or disease or to the dependant in respect of the death of the member, and the person shall comply with the notice.

- (3) Where, before a notice under subsection (2) was received by a person, the person had paid to or in respect of the member or dependant the whole or any part of the damages to which the notice relates:

- (a) if the whole of the damages had been paid—the notice has no force or effect;
or

- (b) if part only of the damages had been paid—the reference in that subsection to the amount of the damages shall be read as a reference to so much of that amount as has not been paid.

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- (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 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 member or dependant.
- (6) In this section, *damages* does not include an amount that has been paid in pursuance of a notice under section 51 of the *Safety, Rehabilitation and Compensation Act 1988*.

77 Discharge of liability of Commonwealth to pay damages

Where:

- (a) damages against the Commonwealth have been awarded:
 - (i) to a member of the Forces or a member of a Peacekeeping Force in proceedings instituted to recover damages in respect of an injury suffered by, or a disease contracted by, the member; or
 - (ii) to a dependant of a deceased member of the Forces or a member of a Peacekeeping Force in proceedings instituted to recover damages in respect of the death of the member; and
- (b) pension under this Part is payable, or has been paid, to the member in respect of the incapacity of the member from that injury or disease or to the dependant in respect of the death of the member;

the liability of the Commonwealth to pay those damages, or such part of them as does not represent expenses incurred in medical or hospital treatment, shall be deemed to have been discharged to the extent of the aggregate of the amounts of that pension that have been paid to the member or the dependant, as the case may be.

78 Other payments of compensation

- (1) If, after any pension under this Part has been paid:
 - (a) to a member of the Forces or a member of a Peacekeeping Force in respect of the incapacity of the member from a defence-caused injury or a defence-caused disease; or
 - (b) to a dependant of a deceased member of the Forces or member of a Peacekeeping Force in respect of the death of the member that was defence-caused;

any compensation is paid under the law of a country other than Australia, or by, or under a scheme arranged by, an international organization, to or in respect of the member in relation to the injury suffered by, or the disease contracted by, the member, or to or in respect of the dependant in relation to the death of the member, the Commonwealth may recover from the member or dependant, as the case may be, by action in a court of competent jurisdiction, an amount equal to so much of the amount of compensation so paid as does not exceed the aggregate of the amounts of pension under this Part that have been so paid to the member or dependant, as the case may be.

- (2) The Commission may, by notice in writing to a person (being a claimant for pension under this Part, or a person in receipt of pension under this Part, in respect of the

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incapacity of a member of the Forces or a member of a Peacekeeping Force from a defence-caused injury or a defence-caused disease or the death of such a member), require the person to furnish to the Commission, within a reasonable period specified in the notice, a statutory declaration stating whether any compensation has been paid to or in respect of the person, or has been claimed by or in respect of the person, under a law of a country other than Australia, or under a scheme arranged by an international organization, in respect of the injury suffered, or the disease contracted, by the member, or the death of the member, as the case may be.

- (3) Where a person refuses or fails to comply with a notice under subsection (2), the right of the person to pension under this Part in respect of the injury, disease or death to which the notice relates, and the right of the person to institute or take any proceedings under this Act in relation to that pension or a claim for that pension, are suspended until the statutory declaration is furnished.
- (4) Where a person's right to pension under this Part is suspended under subsection (3), the person is not entitled to be paid pension under this Part in respect of the period of the suspension.
- (5) In this section:

compensation has the same meaning as it has in section 74.

international organization means:

- (a) an organization:
 - (i) of which 2 or more countries, or the Governments of 2 or more countries, are members; or
 - (ii) that is constituted by persons representing 2 or more countries, or representing the Governments of 2 or more countries; or
- (b) an organization that is:
 - (i) an organ of, or office within, an organization described in paragraph (a);
 - (ii) a commission, council or other body established by an organization so described or such an organ; or
 - (iii) a committee, or subcommittee of a committee, of an organization described in paragraph (a), or of such an organ, council or body.

79 Overpayments of pension

- (1) Where:
 - (a) an amount has been paid:
 - (i) to a member of the Forces or a member of a Peacekeeping Force as pension under this Part in respect of the incapacity of the member from a defence-caused injury or defence-caused disease; or
 - (ii) to a dependant of a deceased member of the Forces or member of a Peacekeeping Force as pension under this Part in respect of the death of the member that was defence-caused; and
 - (b) by reason of section 74, that amount was not payable to the member or dependant;

an amount equal to the amount so paid is recoverable from the member or dependant, and may be so recovered, either in whole or in part, by deduction from any amount of pension under this Part payable to the member or dependant in

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respect of the incapacity from that injury or disease or of the death of the member, as the case may be.

- (2) Subsection (1) does not prevent the recovery of an amount referred to in that subsection otherwise than as provided in that subsection, but an amount shall not be recovered as so provided and also otherwise than as so provided.

Rate per fortnight of compensation

2. For the purposes of paragraph 30C (1) (d), 30C (2) (d) or 30C (3) (d) of the Act (as the case may be), the “**rate per fortnight**” is determined by the following formula:

$$\text{Compensation rate} \times \text{Indexation factor}$$

Definitions

3. For the purposes of these Instructions:

“**Actuarial factor**” means:

- (a) in respect of a male, the figure set out in column 2 of the Actuarial Table opposite the age in column 1 that the person would have been on the next birthday after the **commencing date**;
- (b) in respect of a female, the figure set out in column 3 of the Actuarial Table opposite the age in column 1 that the person would have been on the next birthday after the **commencing date**.

“**commencing date**” means:

- (a) the earlier date referred to in subsection 30C (1) (f) of the Act; or
- (b) the later day referred to in paragraph 30C (2) (f) of the Act; or
- (c) the later day referred to in paragraph 30C (3) (f) of the Act;

as the case may be;

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“Compensation rate” is

- (a) in relation to the **initial period**—the **Initial rate**;
- (b) in relation to the first six month period after the **initial period**—the **Initial rate**;
- (c) in relation to each subsequent six month period—the **rate per fortnight** for the previous six month period.

“Index factor”, in relation to a **relevant period**:

- (a) is the number, calculated to 3 decimal places, ascertained by dividing:
 - (i) if the relevant period starts between 1 January and 30 June (inclusive)—the **index number** for the last preceding December quarter; or
 - (ii) if the relevant period starts between 1 July and 31 December (inclusive)—the **index number** for the last preceding June quarter;

by the highest **index number** in respect of a December or June quarter that preceded that quarter;
or

- (b) if the number so ascertained would, if it were calculated to 4 decimal places, end in a number greater than 4—is the number so ascertained increased by 0.001.

“index number”, has the same meaning as it has in section 198 of the Act.

“indexation day” is 20 March and 20 September of each year.

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“Indexation factor” is determined by the following table:

condition	Indexation factor
in respect of the initial period	1
in respect of each six month period after the initial period if the Index factor is less than 1	1
in respect of each six month period after the initial period if the Index factor is equal to or greater than 1	the Index factor

“initial period” means the period beginning on the **commencing date** and ending immediately before the next **indexation day** after the first implementation of the application of section 30C to the particular case.

“Initial rate” is:

$$(\text{Lump sum} \times \text{Actuarial factor}) \div 10,000$$

“Lump sum” means the amount of the lump sum of compensation in dollars.

“relevant period” has the same meaning as it has in section 198 of the Act.

Application

4. This Instruction applies to all matters to which section 30C of the Act applies on and after the date of this Instruction.

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Actuarial Table

Column 1 AGE	Column 2 MALES	Column 3 FEMALES
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Column 1 AGE	Column 2 MALES	Column 3 FEMALES
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Rate per fortnight of compensation

2. For the purposes of subsection 74 (3), 74 (3A) or 74 (3B) of the Act (as the case may be), the “**rate per fortnight**” is determined by the following formula:

$$\text{Compensation rate} \times \text{Indexation factor}$$

Definitions

3. For the purposes of these Instructions:

“**Actuarial factor**” means:

- (a) in respect of a male, the figure set out in column 2 of the Actuarial Table opposite the age in column 1 that the person would have been on the next birthday after the **commencing date**;
- (b) in respect of a female, the figure set out in column 3 of the Actuarial Table opposite the age in column 1 that the person would have been on the next birthday after the **commencing date**.

“**commencing date**” means:

- (a) the earlier date referred to in subsection 74 (3) of the Act; or
- (b) the later day referred to in paragraph 74 (3A) (e) of the Act; or
- (c) the later day referred to in paragraph 74 (3B) (e) of the Act;

as the case may be;

“**Compensation rate**” is

- (a) in relation to the **initial period**—the **Initial rate**;

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- (b) in relation to the first six month period after the **initial period**—the **Initial rate**;
- (c) in relation to each subsequent six month period—the **rate per fortnight** for the previous six month period.

“Index factor”, in relation to a **relevant period**:

- (a) is the number, calculated to 3 decimal places, ascertained by dividing:
 - (i) if the relevant period starts between 1 January and 30 June (inclusive)—the **index number** for the last preceding December quarter; or
 - (ii) if the relevant period starts between 1 July and 31 December (inclusive)—the **index number** for the last preceding June quarter;

by the highest **index number** in respect of a December or June quarter that preceded that quarter;
or

- (b) if the number so ascertained would, if it were calculated to 4 decimal places, end in a number greater than 4—is the number so ascertained increased by 0.001.

“index number”, has the same meaning as it has in section 198 of the Act.

“indexation day” is 20 March and 20 September of each year.

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“**Indexation factor**” is determined by the following table:

Condition	Indexation factor
in respect of the initial period	1
in respect of each six month period after the initial period if the Index factor is less than 1	1
in respect of each six month period after the initial period if the Index factor is equal to or greater than 1	the Index factor

“**initial period**” means the period beginning on the **commencing date** and ending immediately before the next **indexation day** after the first implementation of the application of section 74 to the particular case.

“**Initial rate**” is:

$$(\text{Lump sum} \times \text{Actuarial factor}) \div 10,000$$

“**Lump sum**” means the amount of the lump sum of compensation in dollars.

“**relevant period**” has the same meaning as it has in section 198 of the Act.

Application

4. This Instruction applies to all matters to which subsection 74 (3), 74 (3A), or 74 (3B) of the Act applies on and after the date of this Instruction.

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Actuarial Table

Column 1 AGE	Column 2 MALES	Column 3 FEMALES
1	12.923	12.617
2	12.934	12.625
3	12.982	12.664
4	13.035	12.706
5	13.090	12.750
6	13.149	12.796
7	13.210	12.844
8	13.274	12.894
9	13.341	12.946
10	13.410	13.000
11	13.482	13.056
12	13.558	13.114
13	13.636	13.175
14	13.717	13.237
15	13.801	13.302
16	13.887	13.369
17	13.975	13.439
18	14.064	13.510
19	14.153	13.584
20	14.244	13.660
21	14.337	13.739
22	14.435	13.822
23	14.536	13.908
24	14.643	13.999
25	14.754	14.093
26	14.870	14.192
27	14.991	14.294
28	15.119	14.402
29	15.252	14.514
30	15.392	14.630
31	15.538	14.752
32	15.692	14.880
33	15.854	15.012
34	16.024	15.152
35	16.202	15.297
36	16.390	15.450
37	16.588	15.609
38	16.796	15.777
39	17.015	15.953
40	17.246	16.137
41	17.490	16.331
42	17.748	16.534
43	18.020	16.748
44	18.309	16.973
45	18.613	17.210
46	18.936	17.459
47	19.278	17.721
48	19.640	17.997
49	20.024	18.287
50	20.431	18.594

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Column 1 AGE	Column 2 MALES	Column 3 FEMALES
51	20.862	18.918
52	21.320	19.259
53	21.806	19.620
54	22.322	20.002
55	22.871	20.405
56	23.454	20.833
57	24.075	21.287
58	24.736	21.770
59	25.439	22.283
60	26.189	22.829
61	26.988	23.412
62	27.839	24.035
63	28.747	24.702
64	29.716	25.416
65	30.749	26.182
66	31.851	27.005
67	33.028	27.889
68	34.286	28.840
69	35.631	29.866
70	37.071	30.973
71	38.616	32.170
72	40.277	33.468
73	42.070	34.878
74	44.011	36.414
75	46.118	38.087
76	48.406	39.910
77	50.885	41.895
78	53.560	44.051
79	56.437	46.388
80	59.519	48.915
81	62.808	51.650
82	66.307	54.618
83	70.010	57.847
84	73.912	61.366
85	77.998	65.193
86	82.245	69.337
87	86.615	73.787
88	91.050	78.508
89	95.462	83.446
90	99.726	88.537