

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
SENATE

Presented and read a first time

(Industrial Relations)

**INDUSTRIAL RELATIONS AND OTHER LEGISLATION
AMENDMENT BILL 1993**

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1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

Presented and read a first time

(Industrial Relations)

A BILL

FOR

**An Act to amend the law about industrial relations,
and for other purposes**

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *Industrial Relations and other Legislation Amendment Act 1993*.

Commencement

2.(1) Sections 1, 2 and 58 commence on the day on which this Act receives the Royal Assent.

(2) Section 32 commences on the 14th day after the day on which this Act receives the Royal Assent or 1 January 1994, whichever is the later.

(3) Section 34 is taken to have commenced on 6 September 1991.

(4) Section 47 is taken to have commenced on 24 December 1992.

(5) The remaining sections commence on the 28th day after the day on which this Act receives the Royal Assent. 5

PART 2—AMENDMENTS OF THE DEFENCE ACT 1903

Principal Act

3. In this Part, “**Principal Act**” means the *Defence Act 1903*¹.

Interpretation

4. Section 58F of the Principal Act is amended:

(a) by omitting the definition of “Chairman”;

(b) by inserting the following definition:

“‘**President**’ means the President of the Tribunal appointed under section 58G;”;

(c) by omitting “Chairman” from the definition of “member of the Tribunal” and substituting “President”. 15

Establishment of Defence Force Remuneration Tribunal

5. Section 58G of the Principal Act is amended by omitting “Chairman” from paragraph (2)(a) and subsection (4) and substituting “President”. 20

Functions and powers of Tribunal

6. Section 58H of the Principal Act is amended by omitting from subsections (3) and (5), paragraph (6)(b) and subsections (9) and (10) “Chairman” and substituting “President”.

Reports by Tribunal

7. Section 58J of the Principal Act is amended by omitting from subsection (1) “Chairman” and substituting “President”. 25

Procedure of Tribunal

8. Section 58K of the Principal Act is amended by omitting from subsections (1), (2), (3) and (4) “Chairman” (wherever occurring) and substituting “President”. 30

Single member may conduct Tribunal’s business

9. Section 58KA of the Principal Act is amended by omitting from subsections (1), (2) and (3) “Chairman” (wherever occurring) and substituting “President”. 35

Review of action etc. of single member

10. Section 58KC of the Principal Act is amended by omitting from subsection (1) "Chairman" and substituting "President".

Terms and tenure of office

5 11. Section 58L of the Principal Act is amended by omitting from paragraph (2)(c) "Chairman" and substituting "President".

Acting appointments

10 12. Section 58P of the Principal Act is amended by omitting from subsections (1), (2) and (8) "Chairman" (wherever occurring) and substituting "President".

**PART 3—AMENDMENTS OF THE INDUSTRIAL RELATIONS
ACT 1988**

Principal Act

15 13. In this Part, "Principal Act" means the *Industrial Relations Act 1988*².

Interpretation

20 14. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definition:
"‘prescribed’ includes prescribed by Rules of the Commission made under section 48;".

Insertion of new Division

15. Before Division 1 of Part IV of the Principal Act the following Division is inserted:

“Division 1A—Interpretation

25 **Definition of “State industrial body”**

“61A. In this Part:
‘State industrial body’ means a court, tribunal, board, authority or other body of a State.”.

Functions of the Industrial Registry

30 16. Section 63 of the Principal Act is amended by inserting after subsection (1) the following subsections:

“(1A) If an agreement made by the Minister, after consulting the President, with an appropriate authority of a State:

Industrial Relations and other Legislation
Amendment No. , 1993

- (a) provides for the Industrial Registrar or a Deputy Industrial Registrar to be appointed under an Act of the State to be the Registrar of a State industrial body; or
- (b) provides for the Industrial Registrar or a Deputy Industrial Registrar to perform or exercise any functions, duties or powers of the Registrar of a State industrial body; 5

subsections (1B) and (1C) apply subject to the agreement.

“(1B) The Industrial Registry has the following functions:

- (a) acting as the registry for the State industrial body;
- (b) providing administrative support to the State industrial body. 10

“(1C) If:

- (a) either of the following subparagraphs applies:
 - (i) the Industrial Registrar or the Deputy Industrial Registrar is appointed under an Act of the State to be the Registrar of another State industrial body that has replaced the State industrial body referred to in the agreement; 15
 - (ii) an Act of the State, or the agreement, authorises the Industrial Registrar or the Deputy Industrial Registrar to perform or exercise any functions, duties or powers of another State industrial body that has replaced the State industrial body referred to in the agreement; and 20
- (b) the Minister, after consulting the President, has agreed to the Industrial Registry having the following functions:
 - (i) acting as the registry for the other State industrial body;
 - (ii) providing administrative support to the other State industrial body; 25

the Industrial Registry has those functions.

“(1D) If, after consulting the President, the Minister has made an agreement with an appropriate authority of a State for the Industrial Registry to perform the functions (**‘State Registry functions’**) of acting as the registry for, and providing administrative support to, a State industrial body referred to in the agreement and: 30

- (a) State Registry functions in relation to the State industrial body referred to in the agreement are expressed to be conferred on the Industrial Registry by or under an Act of the State or the agreement; 35
- or

- 5 (b) State Registry functions in relation to another State industrial body that has replaced the State industrial body referred to in the agreement are expressed to be conferred on the Industrial Registry by or under an Act of the State or the agreement and the Minister, after consulting the President, has agreed to the Industrial Registry performing those functions in relation to the other State industrial body;

10 then, subject to the agreement, the Industrial Registry has the State Registry functions in relation to the State industrial body referred to in the agreement or the other State industrial body, as the case may be.”

Industrial Registrar

17. Section 67 of the Principal Act is amended:

- (a) by inserting after subsection (2) the following subsections:

15 “(2A) If an agreement is made between the Minister and the appropriate authority of a State as mentioned in subsection 63(1A), then, subject to the agreement:

- 20 (a) if the Industrial Registrar is appointed under an Act of the State to be the Registrar of a State industrial body referred to in the agreement, or to be the Registrar of another State industrial body as mentioned in subparagraph 63(1C)(a)(i)—the Industrial Registrar has, and must perform, any functions or duties, and may exercise any powers, of the Registrar of the body concerned, whether the functions, duties or powers are conferred by or under that Act or another Act of the State; or
- 25 (b) if an Act of the State, or the agreement, is expressed to authorise the Industrial Registrar to perform or exercise any functions, duties or powers of the Registrar of a State industrial body referred to in the agreement or any functions, duties or powers of the Registrar of another State industrial body as mentioned in subparagraph 63(1C)(a)(ii)—the Industrial Registrar has, and must perform, those functions or duties, or
- 30 may exercise those powers, as the case may be.

“(2B) If:

- 35 (a) under subsection 63(1D) the Industrial Registry has the functions of acting as the registry for, and providing administrative support to, a State industrial body; and
- 40 (b) a law of the State is expressed to authorise the Industrial Registrar, or a Registrar, to perform or exercise any functions, duties or powers relevant to the performance of the functions referred to in paragraph (a);

then, subject to the agreement referred to in subsection 63(1D), the Industrial Registrar has, and must perform, those functions or duties, or may exercise those powers, as the case may be.”;

(b) by inserting after subsection (4) the following subsection:

“(4A) In performing or exercising any functions, duties or powers in relation to a State industrial body as mentioned in subsection (2A) or (2B), the Industrial Registrar must comply with any directions lawfully given by the body.”;

(c) by adding at the end of subsection (5) “and the needs of any State industrial body in respect of which the Industrial Registrar or a Deputy Industrial Registrar performs or exercises functions, duties or powers”.

Deputy Industrial Registrars

18. Section 75 of the Principal Act is amended by adding at the end the following subsections:

“(3) If an agreement is made between the Minister and the appropriate authority of a State as mentioned in subsection 63(1A), then, subject to the agreement:

(a) if a Deputy Industrial Registrar is appointed under an Act of the State to be the Registrar or a Deputy Registrar of a State industrial body referred to in the agreement, or to be the Registrar or a Deputy Registrar of another State industrial body as mentioned in subparagraph 63(1C)(a)(i)—the Deputy Industrial Registrar has, and must perform, any functions or duties, and may exercise any powers, of the Registrar or Deputy Registrar, as the case may be, of the body concerned, whether the functions, duties or powers are conferred by or under that Act or another Act of the State; or

(b) if an Act of the State, or the agreement, is expressed to authorise a Deputy Industrial Registrar or a Deputy Registrar to perform or exercise any functions, duties or powers of the Registrar or a Deputy Registrar of a State industrial body referred to in the agreement or any functions, duties or powers of the Registrar or a Deputy Registrar of another State industrial body as mentioned in subparagraph 63(1C)(a)(ii)—the Deputy Industrial Registrar has, and must perform, those functions or duties, or may exercise those powers, as the case may be.

“(4) If:

(a) under subsection 63(1D) the Industrial Registry has the functions of acting as the registry for, and providing administrative support to, a State industrial body; and

- (b) a law of the State is expressed to authorise the Industrial Registrar, or a Registrar, to perform or exercise any functions, duties or powers relevant to the performance of the functions referred to in paragraph (a);

5 then, subject to the agreement referred to in subsection 63(1D), each Deputy Industrial Registrar:

- (c) has the functions, duties or powers referred to in paragraph (b); and
(d) must perform those functions or duties or may exercise those powers, as the case may be, subject to the directions of the Industrial Registrar.”.

10

Variation of common rules

19. Section 142 of the Principal Act is amended:

- (a) by inserting in subsection (5) “within the prescribed time” after “lodged”;

15 (b) by inserting in paragraph (7)(b) “within the prescribed time” after “lodged”;

- (c) by adding at the end the following subsection:

“(8) In this section:

20 ‘the prescribed time’ means the period, after the publication of the notice under subsection (4), prescribed by Rules of the Commission made under section 48.”.

20

Repeal and substitution of new section

20. Section 293 of the Principal Act is repealed and the following section is substituted:

Schedule 4—Complementary registration systems

“293. If:

- (a) an organisation is divided into branches; and
(b) the operations of one of the branches is confined to a prescribed State or the operations of 2 or more of the branches are each confined to a prescribed State; and
(c) the organisation proposes in accordance with Schedule 4 to amalgamate with an associated body as defined by that Schedule for the purpose of seeking the non-corporate registration of the branch, or of any of the branches, referred to in paragraph (b) under an Act of the State concerned that is, or under Acts of the States concerned each of which is, a prescribed State Act for the purposes of that Schedule;

30

35

then, in addition to the preceding provisions of this Part, that Schedule applies to the organisation but so applies only in relation to the branch or branches referred to in paragraph (c).”.

40

Prosecutions

21. Section 341 of the Principal Act is repealed.

Schedule 4

22.(1) Schedule 4 to the Principal Act is amended by omitting from subclause 2(3) “Registrar” and substituting “designated Presidential Member”.

(2) Schedule 4 to the Principal Act is amended by inserting after subclause 7(3) the following subclause:

“(3A) If the rules of the organisation do not comply, subject to subclause 2(3), with Part 2 in respect of each branch for which the organisation proposes to seek non-corporate registration under a prescribed State Act, the proposed alterations must include such alterations as are necessary for the rules so to comply.”.

(3) Schedule 4 to the Principal Act is amended by omitting Part 4.

PART 4—AMENDMENTS OF THE MATERNITY LEAVE (COMMONWEALTH EMPLOYEES) ACT 1973

Principal Act

23. In this Part, “Principal Act” means the *Maternity Leave (Commonwealth Employees) Act 1973*.

Interpretation

24. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“‘Department of the Australian Public Service’ has the same meaning as the expression ‘Department’ in the *Public Service Act 1922*;

‘Secretary’ has the same meaning as in the *Public Service Act 1922*.”.

Insertion of new section

25. After section 5 of the Principal Act the following section is inserted:

How Act applies to persons employed in Parliamentary Departments

“5A.(1) In this section:

‘Head’, in relation to a Parliamentary Department, means:

- (i) if the Department is the Department of the Senate—the Clerk of the Senate; or
- (ii) if the Department is the Department of the House of Representatives—the Clerk of that House; or

- (iii) if the Department is the Department of the Parliamentary Library—the Parliamentary Librarian; or
- (iv) if the Department is the Department of the Parliamentary Reporting Staff—the Principal Parliamentary Reporter; or
- 5 (v) if the Department is the Joint House Department—the Secretary to that Department;

‘Parliamentary Department’ means the Department of the Senate, the Department of the House of Representatives, the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff
10 or the Joint House Department.

“(2) For the purposes of the application of this Act in relation to a person employed in a Parliamentary Department:

(a) the powers conferred by section 8 on the Public Service Commissioner are to be exercised, in substitution for the Public
15 Service Commissioner, by:

(i) if the person is employed in the Department of the Senate—the President of the Senate; or

(ii) if the person is employed in the Department of the House of Representatives—the Speaker of that House; or

20 (iii) if the person is employed in another Parliamentary Department—the President of the Senate and the Speaker of the House of Representatives acting jointly; and

(b) the powers conferred on the Secretary to the Department (other than the power of delegation conferred by section 11) are to be exercised,
25 in substitution for the Secretary to the Department, by the Head of the Parliamentary Department concerned.

“(3) The Head of a Parliamentary Department may, by signed writing, delegate to an officer of, or person employed in, the Parliamentary Department any of the Head of the Parliamentary Department’s functions or
30 powers under this Act.

“(4) A delegation of a function or power under subsection (3) by the Head of a Parliamentary Department:

(a) unless revoked under paragraph (b), continues in force even though the person who gave the delegation has ceased to be the Head of the
35 Parliamentary Department; and

(b) may be revoked by writing signed by the person who is for the time being the Head of the Parliamentary Department.

“(5) If the Head of a Parliamentary Department has delegated a function or power under subsection (3), the Head of the Parliamentary Department may issue guidelines to the delegate with respect to the performance of the function or the exercise of the power.”.

Officers of the Public Service on maternity leave

5

26. Section 8 of the Principal Act is amended:

(a) by omitting from paragraph (1)(a) “Public Service of the Commonwealth” and substituting “Australian Public Service”;

(b) by omitting from subsection (2A) “the Public Service Commissioner is not required to comply with the provisions of that subsection” and substituting “that subsection does not have to be complied with”.

10

Delegation by Secretary

27. Section 11 of the Principal Act is amended by inserting after “another Department” in subsection (1) “of the Australian Public Service”.

Sub-delegation by delegate of Secretary

15

28. Section 12 of the Principal Act is amended by inserting after “another Department” in subsection (1) “of the Australian Public Service”.

PART 5—AMENDMENTS OF THE OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) ACT 1991

Principal Act

20

29. In this Part, “**Principal Act**” means the *Occupational Health and Safety (Commonwealth Employment) Act 1991*⁴.

Interpretation

30. Section 5 of the Principal Act is amended by inserting in subsection (1) the following definition:

25

“**premises**’ includes any place (whether enclosed or built on or not), including a place situated under ground or under water, and, in particular, includes:

(a) a building, aircraft, vehicle or vessel; and

(b) any structure, whether a fixed structure, or a moveable structure such as a tent, and whether on land, on the bed of any waters or floating on any waters; and

30

(c) a part of premises (including a part of premises of a kind referred to in paragraph (a) or (b)).”.

Regulations relating to occupational health and safety

35

31. Section 23 of the Principal Act is amended by omitting from subsection (1) “occupational health and safety of employees or contractors.” and substituting:

“occupational health and safety of:

- (a) employees or contractors; or
- (b) other persons at or near a workplace.”.

Notification and reporting of accidents and dangerous occurrences

5 **32.** Section 68 of the Principal Act is amended by omitting “Where, at
or near a workplace at which an undertaking is being conducted by an
employer, there is, arising out of the conduct of the undertaking:” and
substituting “If an employer is conducting an undertaking, and there arises
10 out of the conduct of the undertaking or out of work performed by an
employee in connection with the undertaking:”.

Codes of practice

33. Section 70 of the Principal Act is amended:

- (a) by omitting from paragraph (2)(a) “section 38(1)” and substituting
“subsection 38(1)”;
- 15 (b) by omitting from subsection (2) “incorporate that standard or code,
to the extent that it is capable of relating to Commonwealth
employment, in a code of practice prepared by the Commission for
Ministerial approval under this section” and substituting
20 “incorporate in a code of practice prepared by the Commission for
Ministerial approval under this section so much of that standard or
code as is capable of relating to Commonwealth employment and has
not been applied, adopted or incorporated, with or without
modification, in regulations made for the purposes of section 23”.

Certain matters to be included in annual reports

25 **34.** Section 74 of the Principal Act is amended by omitting from
subparagraph (1)(f)(iii) “30” and substituting “29”.

PART 6—AMENDMENTS OF THE REMUNERATION TRIBUNAL ACT 1973

Principal Act

30 **35.** In this Part, “**Principal Act**” means the *Remuneration Tribunal Act*
*1973*⁵.

Interpretation

36. Section 3 of the Principal Act is amended:

- (a) by omitting from subsection (1) the definition of “Chairman”;
- 35 (b) by inserting in subsection (1) the following definition:
“**‘President’** means President of the Tribunal and includes a
member appointed under subsection 4A(1);”;

- (c) by omitting from paragraphs (4)(b), (c), (d), (da), (f) and (s) “Chairman” and substituting “President”.

Establishment of Remuneration Tribunal

37. Section 4 of the Principal Act is amended:

- (a) by omitting from subsection (5) “Chairman” and substituting “President”;
- (b) by omitting subsection (8) and substituting the following subsection:
“(8) In this section, ‘President’ does not include an acting President.”.

Acting President

38. Section 4A of the Principal Act is amended by omitting from subsections (1), (3), (4) and (5) “Chairman” (wherever occurring) and substituting “President”.

Disclosure of interest by Tribunal members

39. Section 4B of the Principal Act is amended by omitting “Chairman” (wherever occurring) and substituting “President”.

Functions of Tribunal

40. Section 5 of the Principal Act is amended by adding at the end the following subsection:

“(3) In providing advice under subsection (2) in relation to the terms and conditions as to remuneration on which principal executive offices are to be held, the Tribunal must have regard to the superannuation entitlements of the holders of those offices.”.

Inquiries and reports by Tribunal

41. Section 6 of the Principal Act is amended by omitting from paragraph (3)(b) “Chairman” and substituting “President”.

Inquiries and determinations by Tribunal

42. Section 7 of the Principal Act is amended by omitting from paragraph (4)(b) “Chairman” and substituting “President”.

Insertion of new sections

43. After section 8A of the Principal Act the following sections are inserted:

Hearings in relation to discriminatory determinations

“8B.(1) If a determination is referred to the Tribunal under section 50C of the *Sex Discrimination Act 1984*, the Tribunal must hold a hearing to review the determination.

“(2) Section 10 applies to the hearing as if it were a meeting of the Tribunal.

“(3) The Tribunal must decide whether or not the hearing is to be held in public.

5 “(4) If the Tribunal decides that the hearing is not to be held in public, then, subject to subsection (5), it may decide the people who may be present.

“(5) The Sex Discrimination Commissioner is entitled to notice of, and to be present at, the hearing and may make submissions to the Tribunal.

“(6) In this section:

10 **‘determination’** includes a variation to a determination.

Review of discriminatory determinations

“8C.(1) If:

(a) a determination has been referred to the Tribunal under section 50C of the *Sex Discrimination Act 1984*; and

15 (b) the Tribunal considers that the determination is a discriminatory determination;

the Tribunal must take the necessary action to remove the discrimination, by setting aside the determination, setting aside terms of the determination or varying the determination.

20 “(2) In this section:

‘determination’ has the same meaning as in section 8B;

‘discriminatory determination’ means a determination that:

(a) has been referred to the Tribunal under section 50C of the *Sex Discrimination Act 1984*; and

25 (b) requires a person to do an act that would be unlawful under Part II of the *Sex Discrimination Act 1984* except for the fact that the act would be done in direct compliance with the determination.

30 “(3) For the purposes of the definition of ‘discriminatory determination’ in subsection (2), the fact that an act is done in direct compliance with the determination does not of itself mean that the act is reasonable.”.

Meetings of the Tribunal

44. Section 10 of the Principal Act is amended by omitting from subsections (1), (2) and (3) “Chairman” (wherever occurring) and substituting “President”.

**PART 7—AMENDMENTS OF THE SAFETY REHABILITATION
AND COMPENSATION ACT 1988**

Principal Act

45. In this Part, “**Principal Act**” means the *Safety Rehabilitation and Compensation Act 1988*⁶. 5

Short title

46. Section 1 of the Principal Act is amended by omitting “*Safety*” and substituting “*Safety*,”.

Employees

47. Section 5 of the Principal Act is amended by omitting paragraph (4)(b) and substituting the following paragraph: 10

“(b) whose last employer under an engagement at that place was the Commonwealth, a Commonwealth authority or a licensed corporation;”.

Reduction of compensation in certain cases 15

48. Section 33 of the Principal Act is amended by omitting from subsection (1) “21A” and substituting “21A,”.

Interpretation

49. Section 60 of the Principal Act is amended:

- (a) by omitting from the definition of “determination” in subsection (1) “21A” and substituting “21A,”; 20
- (b) by inserting in the definition of “determination” in subsection (1) “, under paragraph 114B(5)(a)” after “39”.

Provisions applicable on death of beneficiary

50. Section 111 of the Principal Act is amended by omitting from subsection (2A) “Subsection” and substituting “Subsections”. 25

Recovery of overpayments

51. Section 114 of the Principal Act is amended:

- (a) by omitting from subsection (1) “Where:” and substituting “Subject to subsection (1A), if:”; 30
- (b) by inserting after subsection (1) the following subsection:
 - “(1A) Paragraph (1)(b) does not apply to an amount of compensation that the relevant authority is entitled to recover under section 114B.”.

Insertion of new sections 35

52. After section 114 of the Principal Act the following sections are inserted:

Notice to Comcare of retirement of employee

“114A.(1) If:

- 5 (a) an employee of the Commonwealth, of a Commonwealth authority that holds a Class 2 Licence in force under Part VIIIA, or of a Commonwealth authority other than a licensed authority, is receiving, or is entitled to receive, compensation under this Act; and
- (b) the appropriate officer in relation to the employee becomes aware that the employee has retired from his or her employment;

10 then, as soon as practicable after becoming so aware, the officer must give written notice to Comcare stating that the employee has retired and the date of the retirement and identifying the superannuation scheme of which the employee was a member at the time of his or her retirement.

“(2) In this section:

‘appropriate officer’, in relation to an employee, means:

- 15 (a) if the employee is employed in a Department—the Secretary of that Department; or
- (b) if the employee is employed by the Commonwealth otherwise than in a Department—a person prescribed by the regulations; or
- 20 (c) if the employee is employed by a Commonwealth authority—the principal officer of that authority;

‘Department’ has the same meaning as in the *Public Service Act 1922*;

‘Secretary’ has the same meaning as in the *Public Service Act 1922*.

Recovery of overpayment to retired employee

“114B.(1) If:

- 25 (a) an employee retires from his or her employment; and
- (b) the retired employee is or may be entitled to a pension or a lump sum, or both a pension and a lump sum, under a superannuation scheme; and
- 30 (c) Comcare or a licensed authority is of the opinion that it may pay, or may have paid, to the retired employee an amount or amounts of compensation under this Act in excess of the amount or amounts that he or she was entitled to receive because of section 20, 21 or 21A;

the following provisions of this section apply.

35 “(2) Comcare or the authority, as the case may be, may give written notice to the administrator of the scheme:

- (a) stating that Comcare or the authority may make, or may have made, an overpayment of compensation to the retired employee; and

- (b) requiring the administrator to tell Comcare or the authority whether the retired employee has received any payment in respect of his or her entitlement referred to in paragraph (1)(b) or whether all the retired employee's benefits under the scheme have been deferred; and
- (c) requiring the administrator, if the retired employee has not received any such payment (unless all the retired employee's benefits under the scheme have been deferred):
 - (i) not to pay any pension or lump sum to the retired employee until the administrator receives a notice from Comcare or the authority under subsection (5); and
 - (ii) to give Comcare or the authority, as soon as practicable, particulars of the rate of pension, or the lump sum worked out as at the date of retirement, or the rate of pension and the lump sum as so worked out, as the case may be, that is payable to the retired employee under the superannuation scheme.

“(3) Comcare or the authority, as the case may be, must give to the retired employee a written notice stating that it has given a notice to the administrator of the scheme under subsection (2) and explaining how this section works.

“(4) The following provisions apply if the retired employee has not received any payment in respect of his or her entitlement referred to in paragraph (1)(b) but do not apply if all the retired employee's benefits under the scheme have been deferred.

“(5) When Comcare or a licensed authority receives from the administrator of the superannuation scheme particulars of the rate of pension, or the lump sum, or the rate of pension and the lump sum, payable to the retired employee, then Comcare or the authority, as the case may be, must, within 2 working days after receiving those particulars:

- (a) determine whether an overpayment of compensation to the employee has occurred; and
- (b) give written notice to the administrator:
 - (i) if it determines that no overpayment has occurred—stating that fact; or
 - (ii) otherwise—stating the amount of the overpayment and requiring the administrator to pay that amount to Comcare or the authority in accordance with this section.

“(6) Comcare or a licensed authority must not reduce the rate or amount of compensation payable to the retired employee under this Act until it has given to the administrator of the superannuation scheme the notice referred to in subsection (5).

5 “(7) The amount to be stated in the notice under subparagraph (5)(b)(ii) is the amount by which the sum of the amounts of any compensation paid after the retirement of the employee exceeds the sum of the amounts of compensation that should have been paid because of section 20, 21 or 21A, as the case requires.

10 “(8) The administrator of the superannuation scheme is to pay the amount of the overpayment of compensation to Comcare or the licensed authority in accordance with subsections (9) and (10) out of the payments of pension or of a lump sum that would otherwise have been made by the administrator to the retired employee.

15 “(9) If the amount of any payment of pension or of a lump sum that would otherwise have been made by the administrator to the relevant employee on any day is less than or equal to the adjusted overpayment worked out as at that day, that amount is to be paid by the administrator to Comcare or the authority instead of to the retired employee.

20 “(10) If the amount of any payment of pension or of a lump sum that would otherwise have been made by the administrator to the relevant employee on any day is greater than the adjusted overpayment worked out as at that day, so much of that amount as is equal to that adjusted overpayment is to be paid by the administrator to Comcare or the authority instead of to the retired employee.

25 “(11) For the purposes of subsections (9) and (10), the adjusted overpayment as at a particular day is the amount of the original overpayment less any amounts that have been paid by the administrator to Comcare or the authority before that day in reduction of the original overpayment.

“(12) The payment by the administrator of an amount to Comcare or a licensed authority under a notice given under subsection (5) discharges, to the extent of that amount:

- 30 (a) the liability of the administrator to pay that amount to the retired employee; and
(b) the liability of the employee to pay that amount to Comcare or the authority, as the case may be.

35 “(13) The administrator of a superannuation scheme must comply with a requirement made of the administrator under this section by Comcare or a licensed authority. However, failure to comply with the requirement is not an offence.

“(14) This section has effect despite:

- 40 (a) sections 143 and 143A of the *Superannuation Act 1922*; and
(b) sections 85 and 85A of the *Defence Force Retirement Benefits Act 1948*; and

- (c) sections 129 and 130 of the *Defence Force Retirement and Death Benefits Act 1973*; and
- (d) sections 118 and 119 of the *Superannuation Act 1976*.

“(15) In this section:

‘**working day**’, in relation to a notice to be given by Comcare or a licensed authority, means a day other than a Saturday, a Sunday, or a day that is a public holiday in any State or Territory.”. 5

Comcare may write off debt

53. Section 104A of the Principal Act is renumbered as section 114C.

Comcare may waive debt

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54. Section 104B of the Principal Act is renumbered as section 114D.

**PART 8—AMENDMENTS OF THE SEX DISCRIMINATION
 ACT 1984**

Principal Act

55. In this Part, “**Principal Act**” means the *Sex Discrimination Act 1984*. 15

Insertion of new sections

56. After section 50B of the Principal Act the following sections are inserted:

Referral of discriminatory determinations to the Remuneration Tribunal 20

“50C.(1) A complaint in writing alleging that a person has done a discriminatory act under a determination may be lodged with the Commission by:

- (a) a person aggrieved by the act, on that person’s own behalf or on behalf of that person and one or more other persons aggrieved by the act; or 25
- (b) 2 or more persons aggrieved by the act, on their own behalf or on behalf of themselves and one or more other persons aggrieved by the act; or 30
- (c) a person or persons who are in a class of persons aggrieved by the act, on behalf of all the persons in the class.

“(2) If the Commission receives a complaint under this section, the Commission must notify the Commissioner accordingly.

5 “(3) If it appears to the Commissioner that the act is a discriminatory act, the Commissioner must refer the determination to the Remuneration Tribunal. However, the Commissioner need not refer the determination if the Commissioner is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance.

“ (4) If the Commissioner decides not to refer the determination, the Commissioner must give notice in writing of that decision to the complainant or each of the complainants, together with notice of the reasons for the decision and of the rights conferred by subsection (5).

10 “(5) A complainant who receives a notice under subsection (4) may, within 21 days after receipt, give a notice in writing to the Commissioner requiring the Commissioner to refer the decision to the President.

15 “(6) If the Commissioner receives a notice under subsection (5), the Commissioner must refer the decision to the President together with a report about the decision.

“ (7) If the Commissioner refers the determination to the Remuneration Tribunal, the Commissioner must give notice in writing of the outcome of the referral to the complainant or each of the complainants.

20 “(8) The Commissioner may obtain documents or information under section 54 for the purposes of this section.

“ (9) In this section:

‘determination’ means:

25 (a) a determination made after the commencement of this section by the Remuneration Tribunal under the *Remuneration Tribunal Act 1973*;
or

(b) a variation made after that commencement by that Tribunal to a determination made by it under that Act before that commencement;

30 **‘discriminatory act under a determination’** means an act that would be unlawful under Part II except for the fact that the act was done in direct compliance with a determination.

“ (10) For the purposes of the definition of ‘discriminatory act under a determination’ in subsection (9), the fact that an act is done in direct compliance with the determination does not of itself mean that the act is reasonable.

35 **President may review a decision of the Commissioner not to refer a determination to the Remuneration Tribunal**

“50D.(1) This section applies if the Commissioner refers to the President under subsection 50C(6) a decision of the Commissioner not to refer a determination to the Remuneration Tribunal.

“(2) The President must review the Commissioner’s decision and must decide either:

- (a) to confirm the Commissioner’s decision; or
- (b) to set aside the Commissioner’s decision and to direct the Commissioner to refer the determination in accordance with section 50C. 5

“(3) In spite of subsection (2), the President may refuse to review the Commissioner’s decision unless the complainant gives the President such relevant information as the President requires.

“(4) The President must give written notice of a decision of the President under subsection (2) to the complainant and to the Commissioner. The notice must set out the reasons for the decision.” 10

**PART 9—AMENDMENTS OF THE TRADESMEN’S RIGHTS
REGULATION ACT 1946**

Principal Act 15

57. In this Part, “**Principal Act**” means the *Tradesmen’s Rights Regulation Act 1946*⁸.

Regulations

58. Section 51A of the Principal Act is amended by adding at the end the following subsections: 20

“(2) The Governor-General may make regulations (the ‘**cost recovery regulations**’) in accordance with subsection (3) for the purpose of reimbursing the Department for costs and expenses incurred in, or in connection with:

- (a) the doing by officers of, or persons employed in, the Department of anything to help committees perform their functions; or 25
- (b) the provision by officers of, or persons employed in, the Department of services for employers in connection with the recruitment of tradesmen outside Australia to work in Australia.

“(3) The cost recovery regulations may prescribe fees to be paid to the Department: 30

- (a) by applicants for trade certificates in respect of the making of the applications or for the carrying out of trade tests in connection with the applications, or both; or
- (b) by employers for the provision of services as mentioned in paragraph (2)(b). 35

“(4) The cost recovery regulations may prescribe different fees in respect of different matters or classes or kinds of matters.

“(5) The cost recovery regulations may provide for the Secretary to the Department (the ‘Secretary’) to waive, or defer payment of, fees in particular cases or classes of cases.

5 “(6) The Secretary may, by signed writing, delegate to an officer of, or person employed in, the Department all or any of the powers conferred by subsection (5).

10 “(7) Subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary under a regulation made as mentioned in subsection (5).

“(8) The Secretary must give written notice of such a decision to any person whose interests are affected by the decision.

“(9) The notice must include a statement to the effect that:

15 (a) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made, by or on behalf of the person to whom the notice is given, to the Administrative Appeals Tribunal for review of the decision to which the notice relates; and

20 (b) unless subsection 28(4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of that person for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

“(10) A failure to comply with subsection (9) does not affect the validity of the decision.”

NOTES

1. No. 20, 1903, as amended. For previous amendments, see No. 12, 1904; No. 15, 1909; Nos. 30 and 37, 1910; No. 15, 1911; No. 5, 1912; No. 36, 1914; No. 3, 1915; No. 36, 1917; Nos. 16 and 47, 1918; No. 1, 1927; No. 50, 1932; No. 45, 1934; Nos. 13, 38, 70 and 74, 1939; No. 4, 1941; No. 11, 1945; No. 78, 1947; No. 35, 1948; No. 71, 1949; No. 80, 1950; Nos. 19 and 59, 1951; No. 98, 1952; No. 20, 1953; No. 72, 1956; No. 92, 1964; No. 51, 1965; No. 93, 1966; No. 33, 1970; No. 216, 1973 (as amended by No. 20, 1974); No. 96, 1975 (as amended by No. 164, 1984); Nos. 4 and 20, 1977; No. 19, 1979; No. 132, 1979 (as amended by No. 80, 1982); No. 155, 1979; No. 70, 1980; Nos. 61 and 178, 1981; No. 80, 1982; No. 153, 1982 (as amended by No. 164, 1984); No. 39, 1983; Nos. 164 and 165, 1984; No. 64, 1985; No. 65, 1985 (as amended by No. 75, 1990); No. 193, 1985; Nos. 76 and 163, 1986; No. 65, 1987; Nos. 67, 75, 87, 99 and 100, 1988; No. 104, 1988 (as amended by No. 41, 1989); No. 41, 1989; Nos. 75 and 108, 1990; Nos. 21 and 62, 1991; and Nos. 91 and 92, 1992.
2. No. 86, 1988, as amended. For previous amendments, see No. 109, 1988; No. 153, 1989 (as amended by No. 28, 1991); Nos. 37, 71 and 108, 1990; Nos. 19, 62 and

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- 122, 1991; and Nos. 52, 92 and 94, 1992; No. 109, 1992 (as amended by No. 215, 1992); and Nos. 132, 179, 196, 212 and 215, 1992.
3. No. 72, 1973, as amended. For previous amendments, see No. 168, 1978; No. 155, 1979; Nos. 109 and 129, 1988; No. 199, 1991; and No. 215, 1992.
 4. No. 30, 1991, as amended. For previous amendments see Nos. 7, 95 and 196, 1992. The Act has been modified by Occupational Health and Safety (Commonwealth Employment) Regulations.
 5. No. 215, 1973, as amended. For previous amendments, see No. 80, 1974; No. 96, 1975; Nos. 60 and 178, 1978; Nos. 26, 108, 136 and 155, 1979; No. 160, 1980; Nos. 61, 74 and 176, 1981; Nos. 78 and 111, 1982; Nos. 39 and 128, 1983; Nos. 63, 73 and 164, 1984; Nos. 65 and 187, 1985; No. 87, 1988 (as amended by No. 108, 1990); Nos. 109 and 123, 1988; Nos. 95, 149, 150, 152 and 179, 1989; No. 28, 1990; No. 122, 1991 (as amended by No. 52, 1992); and Nos. 52, 104 and 215, 1992.
 6. No. 75, 1988, as amended. For previous amendments, see Nos. 109 and 135, 1988; No. 68, 1990; No. 70, 1991; No. 122, 1991 (as amended by No. 95, 1992); No. 7, 1992 (as amended by No. 95, 1992); and Nos. 95, 196, 233 and 264, 1992.
 7. No. 4, 1984, as amended. For previous amendments, see No. 72, 1984; No. 65, 1985; Nos. 76 and 126, 1986; Nos. 38, 75, 80 and 87, 1988; No. 115, 1990; Nos. 70 and 71, 1991; and Nos. 132, 165, 179, 180 and 196, 1992.
 8. No. 41, 1946, as amended. For previous amendments, see No. 72, 1947; No. 88, 1952; No. 52, 1955; No. 53, 1958; No. 93, 1966; No. 216, 1973; No. 91, 1976; No. 61, 1981; No. 80, 1982; and No. 63, 1984.