



Australian Participants in British Nuclear Tests (Treatment) Act 2006

No. 135, 2006

**An Act to provide for testing for and treatment of
malignant neoplasia in Australian participants in
British nuclear tests, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to provide for testing for and treatment of
malignant neoplasia in Australian participants in
British nuclear tests, and for other purposes**

[Assented to 30 November 2006]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*.

2 Commencement

This Act commences on the day after it receives the Royal Assent.

3 Extension to external Territories

This Act extends to every external Territory.

4 Definitions

(1) In this Act:

approved pharmaceutical scheme means an approved scheme, within the meaning of section 91 of the *Veterans' Entitlements Act 1986*, that is in force.

Australian resident has the same meaning as in section 5G of the *Veterans' Entitlements Act 1986*.

Commission means the Repatriation Commission continued in existence by section 179 of the *Veterans' Entitlements Act 1986*.

dishonestly has the meaning given by subsection (2).

eligible person means a person who, under section 7, is eligible to be provided with treatment under this Act.

hospital or other institution includes the following:

- (a) a residential care service (within the meaning of the *Aged Care Act 1997*);
- (b) a medical centre;
- (c) an out-patient clinic;
- (d) a rehabilitation establishment.

medical service provider means a person:

- (a) who is a pathology practitioner; or
- (b) who is a proprietor of premises at which pathology services are rendered; or
- (c) who is a proprietor of a hospital or other institution that is not operated by the Commonwealth, a State or a Territory; or
- (d) who is acting on behalf of a proprietor of such a hospital or other institution.

nuclear test area has the meaning given by subsection 5(4).

nuclear test participant means a person who is a nuclear test participant under one or more of subsections 5(1), (2) or (3).

pathology practitioner means a person in respect of whom there is in force an undertaking given by the person, and accepted by the Minister administering the *Health Insurance Act 1973*, under section 23DC of that Act.

pathology service has the meaning given by subsection 3(1) of the *Health Insurance Act 1973*.

pharmaceutical benefits means drugs, medicinal preparations and other pharmaceutical items (including aids to treatment and dressings) for the treatment of sicknesses or injuries suffered by human beings.

proprietor means:

- (a) in relation to premises—the person, authority or body of persons having effective control of the premises (whether or not that person, authority or body is the holder of an estate or interest in the premises); and
- (b) in relation to a hospital or other institution—the proprietor (within the meaning of paragraph (a)) of the premises occupied by the hospital or other institution.

Repatriation Private Patient Principles means the Repatriation Private Patient Principles in force under section 90A of the *Veterans' Entitlements Act 1986*.

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staff member assisting the Commission means a person engaged under the *Public Service Act 1999* and made available for the purposes of this Act by the Secretary of the Department.

testing means conducting a recognised medical test to identify malignant neoplasia (whether or not the person being tested has already been tested for, or diagnosed with, malignant neoplasia), but does not include conducting a test that replicates an existing community-wide government screening program.

treatment means treatment (within the meaning of subsection 80(1) of the *Veterans' Entitlements Act 1986*) of malignant neoplasia, and includes testing.

Treatment Principles means the Treatment Principles in force under section 90 of the *Veterans' Entitlements Act 1986*.

- (2) For the purposes of this Act, a person engages in conduct **dishonestly** if:
- (a) the person engages in conduct; and
 - (b) the conduct is dishonest according to the standards of ordinary people; and
 - (c) the defendant knows the conduct is dishonest according to the standards of ordinary people.

5 Meaning of *nuclear test participant* etc.

- (1) A person is a ***nuclear test participant*** if the person:
- (a) was present in a nuclear test area at any time during:
 - (i) if the area was the Monte Bello Islands area—the period from the beginning of 3 October 1952 to the end of 19 June 1958; or
 - (ii) if the area was the Emu Field area—the period from the beginning of 15 October 1953 to the end of 25 October 1955; or
 - (iii) if the area was the Maralinga area—the period from the beginning of 27 September 1956 to the end of 30 April 1965; and
 - (b) was, at that time:
 - (i) a member of the Australian Defence Force; or

- (ii) an employee of the Commonwealth; or
 - (iii) a person who, under a contract with the Commonwealth, provided construction, maintenance or support services relating to the conduct of nuclear tests in that nuclear test area during that period; and
- (c) was, at that time, an Australian resident.
- (2) A person is a ***nuclear test participant*** if the person:
- (a) was involved in the transport, recovery, maintenance or cleaning of a vessel, vehicle, aircraft or equipment that was contaminated as a result of its use in a nuclear test area, being involvement that occurred at any time during:
 - (i) if the area was the Monte Bello Islands area—the period from the beginning of 3 October 1952 to the end of 19 July 1956; or
 - (ii) if the area was the Emu Field area—the period from the beginning of 15 October 1953 to the end of 25 November 1953; or
 - (iii) if the area was the Maralinga area—the period from the beginning of 27 September 1956 to the end of 30 May 1963; and
 - (b) was, at that time:
 - (i) a member of the Australian Defence Force; or
 - (ii) an employee of the Commonwealth; or
 - (iii) a person who, under a contract with the Commonwealth, provided construction, maintenance or support services relating to the conduct of nuclear tests in that nuclear test area during that period; and
 - (c) was, at that time, an Australian resident.
- (3) A person is a ***nuclear test participant*** if:
- (a) at any time during the period from the beginning of 3 October 1952 to the end of 31 October 1957, the person flew in an aircraft of the Royal Australian Air Force or the Royal Air Force; and
 - (b) at the time the person flew in the aircraft, the aircraft:
 - (i) was used in measuring fallout from nuclear tests conducted in a nuclear test area; and

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- (ii) was contaminated by the fallout; and
- (c) at that time, the person was:
 - (i) a member of the Australian Defence Force; and
 - (ii) an Australian resident.
- (4) A **nuclear test area** is any of the areas described in the following table:

Item	Name of nuclear test area	Description of nuclear test area
1	Monte Bello Islands area	The area within 10 kilometres of Main Beach on Trimouille Island in the Monte Bello Archipelago
2	Emu Field area	The area within 25 kilometres of the Totem test sites at Emu Field
3	Maralinga area	The area within 40 kilometres of any of the Buffalo or Antler test sites

6 Procedures for making claims etc.

- (1) For the purposes of this Act, a claim or application is taken to have been made, or a document is taken to have been given, in accordance with this section if it is made, or given, in accordance with procedures determined by the Secretary under subsection (2).
- (2) The Secretary may, by legislative instrument, determine the procedures for making claims and applications, and lodging documents.

Part 2—Treatment of malignant neoplasia

Division 1—Eligibility to be provided with treatment

7 Eligibility

- (1) A person is eligible to be provided with treatment under this Act if the person:
 - (a) is a nuclear test participant; and
 - (b) is an Australian resident.
- (2) However, a person is not eligible to be provided with treatment under this Act if the person is:
 - (a) eligible to be provided with the treatment under Part V of the *Veterans' Entitlements Act 1986*; or
 - (b) entitled to compensation, in respect of the cost of the treatment, under:
 - (i) the *Safety, Rehabilitation and Compensation Act 1988*;
or
 - (ii) any law relating to workers' compensation; or
 - (c) would be compensated, in respect of the cost of the treatment, under the administrative scheme that:
 - (i) that was established in 1986 for compensation relating to British nuclear tests in Australia; and
 - (ii) for which the Minister administering Part II of the *Safety, Rehabilitation and Compensation Act 1988* is responsible.

8 Claims for eligibility

A person who wants to establish that he or she is an eligible person must make a claim in accordance with section 6 for a determination that he or she is an eligible person.

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9 Withdrawal of claims

- (1) A claimant may, at any time before the Commission determines the claim, withdraw the claim by giving written notice to the Commission in accordance with section 6.
- (2) The withdrawal of a claim does not prevent the claimant from subsequently making another claim under this Act.

10 Determination of claims

- (1) The Commission is to determine claims under section 8.
Note: Rejections of claims are reviewable under Part 4.
- (2) The Commission must give to the claimant written notice of its determination.

11 Revocation of determination of eligibility

- (1) If:
 - (a) the Commission has determined that a person is an eligible person; and
 - (b) the Commission subsequently becomes satisfied that the information before the Commission when it made the determination was false in a material particular;the Commission may revoke the determination.
Note: Revocations are reviewable under Part 4.
- (2) The Commission must give to the person written notice of the revocation.

Division 2—Provision of treatment

12 Provision of treatment

- (1) The Commission may arrange for the provision of treatment for eligible persons.
- (2) Subject to section 13, the Commission is not taken to have arranged for the provision of treatment for a person unless:
 - (a) the treatment was provided in accordance with arrangements made by the Commission under this Act; or
 - (b) the treatment was provided in the circumstances in which, and in accordance with the conditions subject to which, the treatment may be provided under this Act; or
 - (c) the Commission approved the provision of the treatment before the treatment was provided, or began to be provided, as the case may be.

13 Approval of treatment already provided

- (1) The Commission may approve the provision of treatment for a person that was provided, or that began to be provided, without the prior approval of the Commission if:
 - (a) the person is an eligible person; and
 - (b) the Commission is satisfied that it would be proper for the Commission to approve provision of the treatment after it had been provided or had begun to be provided.
- (2) However, the Commission must not approve the provision of treatment that was provided more than 3 months before the person made a claim under section 8 that he or she is an eligible person.
- (3) The Commission is taken to have arranged for the provision of treatment approved under this section.
- (4) If the person for whom the treatment was provided has paid for the provision of treatment approved under this section, the Commonwealth may reimburse the person for the amount paid.

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14 Limits on provision of treatment

- (1) Nothing in this Act is taken to:
- (a) impose a duty on the Commission to arrange for the provision of; or
 - (b) confer a right on a person to be provided, under arrangements made by the Commission, with;
treatment for particular malignant neoplasia, treatment of a particular kind for malignant neoplasia or treatment for malignant neoplasia outside Australia.
- (2) Subject to subsection 12(1), nothing in this Act is taken to confer on a person a right to be provided with treatment for malignant neoplasia:
- (a) by the Commonwealth; or
 - (b) by the Commission otherwise than to the extent that, and in a manner that, the treatment may be provided under arrangements made by, or with the approval of, the Commission.

15 Treatment at hospitals and other institutions

For the purposes of this Part, the Commission may:

- (a) enter into arrangements with the appropriate authority of the Commonwealth, a State or a Territory for the provision of care and welfare, at a public hospital or other institution operated by the Commonwealth, State or Territory, for eligible persons; and
- (b) enter into arrangements with any other body operating a hospital or other institution for the provision of care and welfare at that hospital or institution for eligible persons.

16 Application and modification of the Treatment Principles

- (1) The Treatment Principles, or, if the Treatment Principles have been modified under this section, the Treatment Principles as so modified, are binding on the Commission in the Commission's exercise of its powers and discretions under this Act.

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- (2) The Commission may, in writing, prepare modifications of the Treatment Principles in their application for the purposes of this Act.
- (3) The modifications are to set out circumstances in which, and conditions subject to which, treatment of a particular kind, or included in a particular class of treatment, may be provided under this Act for eligible persons.
- (4) Without limiting subsection (2), the modifications may also include provisions dealing with the following matters in relation to treatment to be provided to eligible persons:
 - (a) whether approval by the Commission of the treatment is required;
 - (b) if approval by the Commission of the treatment is required—the exercise of the Commission’s power to approve the treatment, whether before or after the treatment is given or begins to be given;
 - (c) where the treatment may be provided.
- (5) Without limiting subsection (2), the modifications may specify kinds or classes of treatment that:
 - (a) will not be provided for eligible persons; or
 - (b) will not be so provided at places, or in circumstances, specified or described in the modifications.
- (6) The Commission may, in writing, prepare variations or revocations of the modifications at any time.
- (7) A modification, or a variation or revocation of a modification, has no effect unless the Minister has, in writing, approved the instrument making the modification, variation or revocation.
- (8) A modification, or a variation or revocation of a modification, prepared by the Commission and approved by the Minister is a legislative instrument made by the Minister on the day on which the modification, variation or revocation is approved.

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17 Application and modification of the Repatriation Private Patient Principles

- (1) The Repatriation Private Patient Principles, or, if the Repatriation Private Patient Principles have been modified under this section, the Repatriation Private Patient Principles as so modified, are binding on the Commission in the Commission's exercise of its powers and discretions under this Act.
- (2) The Commission may, in writing, prepare modifications of the Repatriation Private Patient Principles in their application for the purposes of this Act.
- (3) The modifications are to set out circumstances in which treatment provided under this Act for eligible persons is to be provided for those persons as private patients.
- (4) Without limiting subsection (2), the modifications may also include provisions dealing with the following matters in relation to treatment provided under this Act for such persons as private patients:
 - (a) whether approval by the Commission of the treatment is required;
 - (b) if approval by the Commission of the treatment is required—the exercise of the Commission's power to approve the treatment, whether before or after the treatment is given or begins to be given;
 - (c) where the treatment may be provided.
- (5) The Commission may, in writing, prepare variations or revocations of the modifications at any time.
- (6) A modification, or a variation or revocation of a modification, has no effect unless the Minister has, in writing, approved the instrument making the modification, variation or revocation.
- (7) A modification, or a variation or revocation of a modification, prepared by the Commission and approved by the Minister is a legislative instrument made by the Minister on the day on which the modification, variation or revocation is approved.

- (8) For the purposes of this section, treatment is taken to be provided to a person as a private patient if:
- (a) the treatment is provided to the person as a person who is, for the purposes of the *Health Insurance Act 1973*, a private patient of a hospital; or
 - (b) the treatment is provided to the person by a medical specialist to whom the person has been referred but is not provided at a hospital.

18 Application and modification of an approved pharmaceutical scheme

- (1) An approved pharmaceutical scheme, or, if such a scheme has been modified under this section, that scheme as so modified, applies to the provision of pharmaceutical benefits in connection with treatment of eligible persons.
- (2) The Commission may, in writing, prepare modifications of an approved pharmaceutical scheme in its application for the purposes of this Act.
- (3) Without limiting subsection (2), the modifications may specify classes of eligible persons for whom:
- (a) pharmaceutical benefits; or
 - (b) pharmaceutical benefits of a kind specified in the instrument; or
 - (c) pharmaceutical benefits included in a class of pharmaceutical benefits specified in the instrument;
- will not be provided, or will not be provided in circumstances specified or described in the instrument.
- (4) The Commission may, in writing, prepare variations or revocations of the modifications at any time.
- (5) A modification, or a variation or revocation of a modification, has no effect unless the Minister has, in writing, approved the instrument making the modification, variation or revocation.
- (6) A modification, or a variation or revocation of a modification, prepared by the Commission and approved by the Minister is a

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legislative instrument made by the Minister on the day on which the modification, variation or revocation is approved.

Part 3—Travelling expenses

19 Entitlement to travelling expenses

- (1) If:
 - (a) an eligible person travels for the purpose of obtaining treatment; and
 - (b) the Commission approves the travel; and
 - (c) such conditions as are prescribed are satisfied;the person is entitled to be paid such travelling expenses, in connection with the travel, as are prescribed.
- (2) If:
 - (a) a person travels for the purpose of accompanying a person referred to in subsection (1) as his or her attendant; and
 - (b) the Commission authorises the travel for that purpose; and
 - (c) such conditions as are prescribed are satisfied;the person is entitled to be paid such travelling expenses, in connection with the travel, as are prescribed.
- (3) Travelling expenses are not payable under this section in respect of travel outside Australia.

20 Advances of travelling expenses

- (1) If the Commission is satisfied:
 - (a) that a person may reasonably be expected to become entitled to be paid travelling expenses under this section; and
 - (b) that it is in all the circumstances appropriate for the person to be paid an advance on account of the travelling expenses that the person is expected to become entitled to be paid;the Commission may authorise payment to the person of an advance on account of the travelling expenses that the person is expected to become entitled to be paid.

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- (2) If the amount of the advance paid to a person on account of any travelling expenses in respect of any travel of the person exceeds the amount of travelling expenses that become payable to the person in respect of that travel, the person is liable to repay an amount equal to the excess to the Commonwealth.
- (3) The Commonwealth may recover in a court of competent jurisdiction an amount that a person is liable to pay to the Commonwealth under subsection (2).

21 Claims for travelling expenses

- (1) A person who wants to establish that he or she is entitled to be paid travelling expenses under this Part must make a claim in accordance with section 6 for a determination that he or she is entitled to be paid travelling expenses under this Part.
- (2) A claim for travelling expenses must be made:
 - (a) within 12 months after the completion of the travel to which it relates; or
 - (b) if the Commission thinks that there are exceptional circumstances that justify extending that period—such further period as the Commission allows.

22 Withdrawal of claims

- (1) A claimant may, at any time before the Commission determines the claim, withdraw the claim by giving written notice to the Commission in accordance with section 6.
- (2) The withdrawal of a claim does not prevent the claimant from subsequently making another claim under this Act.

23 Determination of claims

- (1) The Commission is to determine claims under section 21.

Note: Rejections of claims are reviewable under Part 4.
- (2) The Commission must give to the claimant written notice of its determination.

Part 4—Review of decisions

Division 1—Review by Commission

24 Request for review

- (1) A claimant who is dissatisfied with:
 - (a) a decision of the Commission in relation to a claim under section 8 for a determination that he or she is an eligible person; or
 - (b) a decision of the Commission under section 11 revoking a determination that he or she is an eligible person; or
 - (c) a decision of the Commission in relation to a claim under section 21 for a determination that he or she is entitled to be paid travelling expenses under Part 3;may request the Commission to review the decision.
- (2) The request:
 - (a) must be made within 3 months after the claimant was notified of the decision; and
 - (b) must be made in accordance with section 6.

25 Review by Commission

- (1) If a request for review of a decision is made in accordance with section 24, the Commission must:
 - (a) review the decision; and
 - (b) affirm the decision or set it aside.
- (2) If the Commission sets the decision aside it must substitute a new decision in accordance with this Act.
- (3) If the Commission has delegated its powers under this section to the person who made the decision under review, that person must not review the decision.

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26 Commission must make written record of review decision and reasons

- (1) When the Commission reviews a decision under this Division, it must make a written record of its decision upon review.
- (2) The written record must include a statement that:
 - (a) sets out the Commission's findings on material questions of fact; and
 - (b) refers to the evidence or other material on which those findings are based; and
 - (c) provides reasons for the Commission's decision.

27 Person who requested review to be notified of decision

When the Commission affirms or sets aside a decision under this Division, it must give the person who requested the review of the decision:

- (a) a copy of the Commission's decision; and
- (b) a copy of the statement about the decision referred to in subsection 26(2).

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

28 Withdrawal of request for review

- (1) A person who requests a review under section 24 may, at any time before the Commission determines the request, withdraw the request by giving written notice to the Commission in accordance with section 6.
- (2) The withdrawal of a request for review does not prevent a person from subsequently making another request for review under this Act.

Note: Paragraph 24(2)(a) provides that a person who wants to request a review of a decision must do so within 3 months after the person has received notice of the decision.

Division 2—Review by Administrative Appeals Tribunal

29 Review by Administrative Appeals Tribunal

If the Commission, under section 25, affirms a decision or sets it aside and substitutes another decision for it, an application may be made to the Administrative Appeals Tribunal for a review of the decision so affirmed or substituted.

Part 5—Administration and enforcement

Division 1—General

30 Additional functions of Commission

- (1) The functions of the Commission include:
 - (a) to arrange for the provision of treatment for eligible persons under this Act; and
 - (b) to administer payment of travelling expenses under Part 3.

Note: For the functions of the Commission, see also section 180 of the *Veterans' Entitlements Act 1986*.

- (2) The Commission has the general administration of this Act, subject to the control of the Minister.

31 Commission not bound by technicalities

In making a decision under this Act, the Commission:

- (a) is not bound to act in a formal manner and is not bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks just; and
- (b) may act according to substantial justice and the substantial merits of the case, without regard to legal form and technicalities; and
- (c) without limiting paragraph (a) or (b), must take into account any difficulties that, for any reason, lie in the way of ascertaining the existence of any fact, matter, cause or circumstance, including any reason attributable to:
 - (i) the effects of the passage of time, including the effect of the passage of time on the availability of witnesses; and
 - (ii) the absence of, or a deficiency in, relevant official records.

32 Delegation

The Commission may, by resolution, delegate any of its functions or powers under a provision of this Act, or under the regulations or any other legislative instrument made under this Act, to:

- (a) a member of the Commission; or
- (b) a staff member assisting the Commission; or
- (c) a consultant to, or an employee of a consultant to, the Commission; or
- (d) a person who is engaged under the *Public Service Act 1999* and performing duties in the Department.

Division 2—Obtaining and giving information etc.

33 Commission may obtain information etc.

- (1) The Commission may give a written notice to any person requiring the person, for the purposes of this Act:
 - (a) to provide to the Commission (or a specified staff member assisting the Commission) such information as the Commission requires; or
 - (b) to produce to the Commission (or a specified staff member assisting the Commission) any documents in the custody or under the control of the person; or
 - (c) to appear before a specified staff member assisting the Commission to answer questions.
- (2) To avoid doubt, the person given the notice may be a person employed:
 - (a) in, or in connection with, a Department of the Commonwealth, a State or Territory; or
 - (b) by any authority of the Commonwealth, a State or Territory.
- (3) The notice must specify:
 - (a) if paragraph (1)(a) or (b) applies:
 - (i) the period within which the person must comply with the notice; and
 - (ii) the manner in which the person must comply with the notice; or
 - (b) if paragraph (1)(c) applies:
 - (i) the time at which the person must appear before the staff member; and
 - (ii) the place at which the person must appear before the staff member.
- (4) The specified period or the specified time mentioned in subsection (3) must be at least 14 days after the notice is given.

- (5) The Commission may require the information or answers provided under paragraph (1)(c) to be verified by, or given on, oath or affirmation and either orally or in writing.
- (6) A staff member to whom information or answers are verified or given may administer the oath or affirmation.
- (7) This section does not require a person to give information, produce a document or give evidence to the extent that, in doing so, the person would contravene a law of the Commonwealth (not being a law of a Territory).

Note: A law of a State or Territory cannot prevent a person from giving information, producing documents or giving evidence for the purposes of this Act (see section 36).
- (8) This section binds the Crown in each of its capacities, but does not make the Crown liable to be prosecuted for an offence.

34 Failure to comply with a notice

- (1) A person commits an offence if the person fails to comply with a notice under section 33.

Penalty: 10 penalty units.
- (2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (3) Subsection (1) does not apply to the extent that the person is not capable of complying with the notice.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

35 Self-incrimination

- (1) An individual is not excused from giving information or evidence, or producing a document or a copy of a document, under section 33 on the ground that the information or evidence, or the production of the document or copy, might tend to incriminate the individual or expose the individual to a penalty.
 - (2) However:
-

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Division 2 Obtaining and giving information etc.

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- (a) giving the information or evidence, or producing the document or copy; or
- (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or evidence, or producing the document or copy;

is not admissible in evidence against the individual in any proceedings, other than proceedings for an offence under section 137.1 or 137.2 of the *Criminal Code* that relates to this Act.

36 Giving information

- (1) Nothing in a law of a State or a Territory operates to prevent a person from giving information, producing documents or giving evidence for the purposes of this Act.
- (2) The Secretary or an employee in the Department may provide any information obtained in the performance of his or her duties under this Act to the Secretary of another Department of the Commonwealth, or to the head of an authority of the Commonwealth, for the purposes of that Department or authority.

Division 3—Offences

37 False or misleading statements or documents relating to treatment

- (1) A person commits an offence if:
- (a) any of the following applies:
 - (i) the person makes a statement (whether oral or written);
 - (ii) the person issues or presents a document;
 - (iii) the person authorises a statement to be made or a document to be issued or presented; and
 - (b) the statement or document is false or misleading in a material particular; and
 - (c) the statement or document is capable of being used in connection with a claim for treatment provided under this Act.

Penalty: 20 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if:

- (a) the person did not know, and could not reasonably be expected to have known, that the statement or document was false or misleading in a material particular; or
- (b) the person did not know, and could not reasonably be expected to have known, that the statement or document was capable of being used in connection with a claim for treatment provided under this Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Section 9.2 of the *Criminal Code* (mistake of fact) does not apply in relation to the matters mentioned in subsection (3).

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- (5) Despite section 15B of the *Crimes Act 1914*, a prosecution for an offence under this section can be commenced at any time within 3 years after the offence is committed.

38 Medical service providers causing detriment to others

A person commits an offence if:

- (a) the person is a medical service provider; and
- (b) the person engages in conduct or omits to engage in conduct; and
- (c) the conduct or omission causes detriment to another person; and
- (d) the person engages in the conduct or omits to engage in the conduct intending:
 - (i) the conduct or omission to cause detriment to the other person; and
 - (ii) to encourage the other person to request a pathology service in respect of treatment provided under this Act; and
- (e) the other person does not consent to the conduct or omission.

Penalty: 120 penalty units or imprisonment for 2 years.

39 Medical service providers threatening detriment

(1) A person commits an offence if:

- (a) the person is a medical service provider; and
- (b) the medical service provider makes a threat to another person to cause detriment to the other person or a third person; and
- (c) the medical service provider is reckless as to causing the other person or the third person to fear that the threat will be carried out; and
- (d) the medical service provider makes the threat intending to encourage the other person to request a pathology service in respect of treatment provided under this Act.

Penalty: 120 penalty units or imprisonment for 2 years.

(2) For the purposes of subsection (1), a threat may be:

- (a) express or implied; or
 - (b) conditional or unconditional.
- (3) In a prosecution for an offence against subsection (1), it is not necessary to prove that the person actually feared that the threat would be carried out.

40 Bribery by medical service providers

A person commits an offence if:

- (a) the person is a medical service provider; and
- (b) the person dishonestly:
 - (i) provides a benefit to another person; or
 - (ii) causes a benefit to be provided to another person; or
 - (iii) offers or promises to provide a benefit to another person; or
 - (iv) causes an offer or a promise to provide a benefit to be made to another person; and
- (c) the person does so intending to encourage the other person to request a pathology service in respect of treatment provided under this Act.

Penalty: 120 penalty units or imprisonment for 2 years.

41 Practitioners receiving bribes etc.

A person commits an offence if:

- (a) the person is a practitioner; and
- (b) the person dishonestly:
 - (i) asks for a benefit for himself or herself, or for another person; or
 - (ii) receives or obtains a benefit for himself or herself, or for another person; or
 - (iii) agrees to receive or obtain a benefit for himself or herself, or for another person; and
- (c) the person does so intending:
 - (i) that treatment provided by him or her under this Act will be influenced; or

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- (ii) to induce, foster or sustain a belief that such treatment will be influenced.

Penalty: 120 penalty units or imprisonment for 2 years.

42 Pathology practitioners making payments to requesting practitioners

- (1) A person commits an offence if:
 - (a) the person is a pathology practitioner; and
 - (b) another practitioner (the *requesting practitioner*) requests the pathology practitioner to provide pathology services to a person (the *patient*); and
 - (c) the patient is an eligible person; and
 - (d) the pathology practitioner provides those services; and
 - (e) the pathology practitioner makes a payment (either directly or indirectly) to the requesting practitioner either:
 - (i) in respect of other services provided by the requesting practitioner to the patient in connection with the request; or
 - (ii) in respect of the use of the requesting practitioner's staff in connection with taking pathology specimens from the patient.

Penalty: 60 penalty units.

- (2) Strict liability applies to paragraph (1)(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

43 Pathology practitioners providing pathology services to persons with whom they have arrangements

- (1) A person commits an offence if:
 - (a) the person is a pathology practitioner; and
 - (b) the person has entered an arrangement with another practitioner to share the cost of:
 - (i) employing staff; or
 - (ii) buying, renting or maintaining items of equipment;

(whether or not the arrangement involves paying money or providing other consideration); and

- (c) the other practitioner requests the person to provide pathology services in respect of treatment under this Act; and
- (d) the person provides those services while the arrangement is in force.

Penalty: 120 penalty units or imprisonment for 2 years.

(2) A person commits an offence if:

- (a) the person is a pathology practitioner; and
- (b) the person has entered an arrangement with another practitioner:
 - (i) to share a particular space in a building; or
 - (ii) for one of them to provide space in a building for the other to use or occupy; or
 - (iii) for one of them to permit the other to use or occupy the building; and
- (c) the charges payable under the arrangement are not charges fixed at normal commercial rates; and
- (d) the other practitioner requests the person to provide pathology services in respect of treatment under this Act; and
- (e) the person provides those services while the arrangement is in force.

Penalty: 120 penalty units or imprisonment for 2 years.

44 Providing staff to be used in pathology services

A person commits an offence if:

- (a) the person is a pathology practitioner; and
- (b) the person provides nursing or other staff at the premises of another practitioner (whether the staff are present full-time, part-time or from time to time); and
- (c) the person intends the staff to be used in taking pathology specimens in respect of treatment under this Act.

Penalty: 120 penalty units or imprisonment for 2 years.

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45 Counselling statements inadmissible as evidence

- (1) This section applies if:
- (a) a person (the *treatment provider*) has provided treatment under this Act; and
 - (b) the treatment provider has been counselled by a staff member assisting the Commission with respect to providing treatment under this Act; and
 - (c) the treatment provider makes a statement during the counselling.
- (2) The statement is inadmissible as evidence against the treatment provider in proceedings prosecuting him or her for an offence mentioned in subsection (3) unless:
- (a) the treatment provider consents to the statement being admitted as evidence in the proceedings; or
 - (b) both of the following apply:
 - (i) evidence of another statement made by the treatment provider during such counselling is admitted on behalf of the provider;
 - (ii) evidence of the statement mentioned in paragraph (1)(c) is adduced to refute evidence of that other statement.
- (3) For the purposes of subsection (2), these are the offences:
- (a) an offence under this Division;
 - (b) an offence against:
 - (i) section 6 of the *Crimes Act 1914* (accessory after the fact); or
 - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code* (attempt, incitement or conspiracy);that relates to an offence under this Division.

Note: In addition to the offences under this Part, there are offence provisions in the *Criminal Code* that might also apply (such as Parts 7.3 (fraudulent conduct), 7.4 (false and misleading statements) and 7.7 (forgery)).

Division 4—Recovery of amounts paid because of false or misleading statements

46 Recovery of amounts paid because of false or misleading statements

- (1) This section applies if:
 - (a) an amount is paid to a person:
 - (i) purportedly by way of reimbursement to a person under subsection 13(4); or
 - (ii) purportedly as travelling expenses under Part 3; and
 - (b) as a result of making a false or misleading statement, the amount paid exceeds the amount (if any) that should have been paid.
- (2) The amount of the excess is recoverable, in a court of competent jurisdiction, as a debt due to the Commonwealth from:
 - (a) the person by or on behalf of whom the statement was made; or
 - (b) the estate of that person.
- (3) Subsection (2) applies whether or not:
 - (a) the amount was paid to the person by or on behalf of whom the statement was made; and
 - (b) any person has been convicted of an offence in relation to the making of the statement.

47 Interest payable on amounts paid because of false or misleading statements

- (1) This section applies if:
 - (a) an amount (the *principal sum*) is recoverable as a debt due to the Commonwealth from a person or estate under section 46; and
 - (b) the Commission has served a notice on the person or estate (as the case requires) claiming the amount as a debt due to the Commonwealth; and
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- (c) an arrangement has been entered into between the Commission and the person or estate (as the case requires) to repay the principal sum within the following period (the *relevant period*):
 - (i) the period of 3 months from the day the notice is served;
 - (ii) such longer period as the Commission allows; and
 - (d) there has been a default (whether before or after the end of that period) in repaying all or part of the principal sum as required by the arrangement.
- (2) This section applies if:
- (a) an amount (the *principal sum*) is recoverable as a debt due to the Commonwealth from a person or estate under section 46; and
 - (b) the Commission has served a notice on the person or estate (as the case requires) claiming the amount as a debt due to the Commonwealth; and
 - (c) an arrangement to repay the principal sum has not been entered into within the following period (the *relevant period*):
 - (i) the period of 3 months from the day the notice is served;
 - (ii) such longer period as the Commission allows; and
 - (d) all or part of the principal sum remains unpaid.
- (3) Interest is payable on the amount of the principal sum that remains unpaid from time to time.
- (4) The interest is payable from:
- (a) the day after the end of the relevant period; or
 - (b) such other later day ordered by a court in any proceedings instituted by the Commonwealth to recover an amount due under this section.
- (5) The interest is payable at the rate prescribed from time to time for the purposes of subsection 129AC(2) of the *Health Insurance Act 1973*.
- (6) The interest is recoverable, in a court of competent jurisdiction, as a debt due to the Commonwealth from the person or estate (as the case requires).
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48 Reduction in payments because of previous overpayments

- (1) The Commission may reduce the amount of any payment that becomes payable to a person if:
 - (a) an amount has previously been paid to the person:
 - (i) purportedly by way of reimbursement to a person under subsection 13(4); or
 - (ii) purportedly as travelling expenses under Part 3; and
 - (b) the amount paid exceeds the amount (if any) that should have been paid; and
 - (c) the person agrees to the reduction.
- (2) The amount of the reduction must not exceed:
 - (a) if the Commission has not previously reduced a payment under this section—the amount of the excess; and
 - (b) otherwise—the amount by which the sum of all amounts of excess under subsection (1) exceeds the sum of all amounts recovered under this section.

Part 6—Miscellaneous

49 Appropriation

The Consolidated Revenue Fund is appropriated to the extent necessary for the payment of:

- (a) amounts payable for provision of treatment under this Act (including amounts payable by way of reimbursement under subsection 13(4)); and
- (b) travelling expenses payable under Part 3.

50 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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*[Minister's second reading speech made in—
House of Representatives on 14 September 2006
Senate on 12 October 2006]*

(137/06)
