



Treatment Benefits (Special Access) Act 2019

No. 41, 2019

**An Act to provide for treatment for eligible
Australian civilians, and for other purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Treatment Benefits (Special Access) Act 2019

No. 41, 2019

**An Act to provide for treatment for eligible
Australian civilians, and for other purposes**

[Assented to 5 April 2019]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *Treatment Benefits (Special Access) Act 2019*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	6 April 2019

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline of this Act

This Act is about providing treatment and paying travelling expenses and pharmaceutical supplement to eligible persons.

A person is eligible for treatment under this Act if the person is an Australian surgical-medical team member and an Australian resident. However, a person is not eligible under this Act if the person is eligible for treatment under certain other treatment schemes (for example, under certain provisions of the *Veterans' Entitlements Act 1986*).

The Commission arranges for the provision of treatment for eligible persons.

The Commission determines claims to establish eligibility for treatment and travel expenses. A person is eligible for pharmaceutical supplement if the person is eligible for treatment under this Act.

Certain decisions under this Act may be reviewed by the Commission and the Administrative Appeals Tribunal.

This Act also deals with other administrative matters (such as the Commission's power to obtain information and to delegate its functions and powers) and enforcement matters (such as offence provisions and the recovery of the costs of treatment and overpayments in certain circumstances).

4 Extension to external Territories

This Act extends to every external Territory.

5 Definitions

(1) In this Act:

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

Australian surgical-medical team member means a person who worked in Vietnam (Southern Zone) as a member of an Australian surgical-medical team under the Commonwealth Government's Southeast Asia Treaty Organisation aid programme at any time during the period beginning on 1 October 1964 and ending on 31 December 1972.

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).

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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.

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); or
- (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 Pharmaceutical Benefits Scheme means the Repatriation Pharmaceutical Benefits Scheme in force under section 91 of the *Veterans' Entitlements Act 1986*.

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

rules means the rules made under section 63.

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.

treatment means treatment (within the meaning of subsection 80(1) of the *Veterans' Entitlements Act 1986*).

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.

Part 2—Treatment

Division 1—Introduction

6 Simplified outline of this Part

A person is eligible to be provided with treatment under this Act if the person is an Australian surgical-medical team member and an Australian resident. However, a person is not eligible under this Act if the person is eligible for treatment under certain other treatment schemes.

A person must make a claim to establish their eligibility for treatment. The Commission determines claims and must give claimants written notice of the Commission's determination.

The Commission arranges for the provision of treatment for eligible persons.

Generally, treatment is arranged by the Commission if it is approved by the Commission, provided in accordance with arrangements made by the Commission and provided in certain circumstances and in accordance with certain conditions.

Division 2—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 an Australian surgical-medical team member; and
 - (b) is an Australian resident.

Note: Under section 203 of the *Veterans' Entitlements Act 1986*, the Minister may enter into an arrangement with a foreign country providing for the provision of treatment that is, or the making of payments that are, comparable to treatment or payments under this Act.

- (2) However, a person is not eligible to be provided with treatment under this Act if the person is:
 - (a) eligible for treatment under section 53D, subsection 85(3), (4), (4A), (4B), (5), (7) or (7A) or section 86 of the *Veterans' Entitlements Act 1986* for any injury or disease (within the meaning of that Act); or
 - (b) entitled to be provided with treatment under section 281, 282 or 284 of the *Military Rehabilitation and Compensation Act 2004* for any injury or disease (within the meaning of that Act); or
 - (c) is eligible for treatment under section 7 of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.

8 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.

9 Claims for eligibility

A person who wants to establish that the person is an eligible person must make a claim in accordance with section 8 for a determination that the person is an eligible person.

10 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 8.
- (2) The withdrawal of a claim does not prevent the claimant from subsequently making another claim under this Act.

11 Determination of claims

- (1) The Commission is to determine claims under section 9.
Note: Rejections of claims are reviewable under Part 5.
- (2) The Commission must give to the claimant written notice of its determination.

12 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 5.
- (2) The Commission must give to the person written notice of the revocation.

Division 3—Provision of treatment

13 Provision of treatment

- (1) The Commission may arrange for the provision of treatment for eligible persons.
- (2) Subject to section 14, 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.

14 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 9 that the person 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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15 Commission may accept financial responsibility for costs in relation to treatment not arranged by Commission

If:

- (a) the Commission is satisfied that an entity, other than the Commission, has arranged for the provision of treatment for an eligible person; and
 - (b) the treatment is of a kind specified under paragraph 18(5)(a);
- then the Commission may, in accordance with paragraph 18(5)(b), accept financial responsibility for particular costs in relation to that treatment (including amounts of subsidy payable under Chapter 3 of the *Aged Care Act 1997* or of the *Aged Care (Transitional Provisions) Act 1997*).

16 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 outside Australia.
- (2) Subject to subsection 13(1), nothing in this Act is taken to confer on a person a right to be provided with treatment:
 - (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.

17 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.

18 Application and modification of the Treatment Principles

Treatment Principles binding on Commission

- (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.

Modification of the Treatment Principles by Commission

- (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 also include provisions:
 - (a) specifying kinds of treatment for the purposes of paragraph 15(b); and

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- (b) specifying the circumstances in which, and the extent to which, the Commission may accept financial responsibility for particular costs relating to that treatment (including amounts of subsidy payable under Chapter 3 of the *Aged Care Act 1997* or of the *Aged Care (Transitional Provisions) Act 1997*).
- (6) 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.

Variation and revocation of modification

- (7) The Commission may, in writing, prepare variations or revocations of the modifications at any time.

Approval by Minister

- (8) 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.
- (9) 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.

19 Application and modification of the Repatriation Private Patient Principles

Repatriation Private Patient Principles binding on Commission

- (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.

Modification of the Repatriation Private Patient Principles

- (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.

Variation and revocation of modification

- (5) The Commission may, in writing, prepare variations or revocations of the modifications at any time.

Approval by Minister

- (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.

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Treatment provided to a person as a private patient

- (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.

20 Application and modification of Repatriation Pharmaceutical Benefits Scheme

Repatriation Pharmaceutical Benefits Scheme binding on Commission

- (1) The Repatriation Pharmaceutical Benefits Scheme, or, if that 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.

Modification of the Repatriation Pharmaceutical Benefits Scheme

- (2) The Commission may, in writing, prepare modifications of the Repatriation Pharmaceutical Benefits 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.

Variation and revocation of modification

- (4) The Commission may, in writing, prepare variations or revocations of the modifications at any time.

Approval by Minister

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

Part 3—Travelling expenses

21 Simplified outline of this Part

Generally, a person is entitled to be paid travelling expenses if the person travels for the purpose of obtaining treatment, the Commission approves the travel and any other prescribed conditions are met.

The Commission may authorise payment in advance of expected travelling expenses in certain circumstances.

A person must make a claim to establish their eligibility to be paid travelling expenses. The Commission determines claims and must give claimants written notice of the Commission's determination.

22 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 the person's attendant; and
 - (b) the Commission authorises the travel for that purpose; and
 - (c) such conditions as are prescribed are satisfied;
- the attendant is entitled to be paid such travelling expenses, in connection with the travel, as are prescribed.

- (3) An approval under paragraph (1)(b) or an authorisation under paragraph (2)(b) may be given before or after the travel is completed.
- (4) Travelling expenses are not payable under this section in respect of travel outside Australia.

23 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 section 22; 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.
- (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).

24 Claims for travelling expenses

- (1) A person who wants to establish that the person is entitled to be paid travelling expenses under this Part must make a claim in accordance with section 8 for a determination that the person 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

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- (b) if the Commission thinks that there are exceptional circumstances that justify extending that period—such further period as the Commission allows.

25 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 8.
- (2) The withdrawal of a claim does not prevent the claimant from subsequently making another claim under this Act.

26 Determination of claims

- (1) The Commission is to determine claims under section 24.
Note: Rejections of claims are reviewable under Part 5.
- (2) The Commission must give to the claimant written notice of its determination.

Part 4—Pharmaceutical supplement

27 Simplified outline of this Part

A person is eligible for pharmaceutical supplement if the person is eligible to be provided with treatment under this Act. However, pharmaceutical supplement is not payable in some circumstances.

28 Eligibility for pharmaceutical supplement

A person is eligible for pharmaceutical supplement under this section if the person is eligible to be provided with treatment under this Act.

Note: Section 29 sets out some circumstances when pharmaceutical supplement is not payable.

29 Pharmaceutical supplement not payable in some circumstances

People leaving Australia otherwise than temporarily

- (1) A person who leaves Australia otherwise than temporarily is not eligible for pharmaceutical supplement under section 28 after the day on which the person left Australia.

Temporary absence from Australia

- (2) A person who is temporarily absent from Australia and has been so absent for more than 26 weeks is not eligible for pharmaceutical supplement under section 28 after the first 26 weeks of the absence.

When a person becomes eligible for pharmaceutical supplement after leaving Australia

- (3) The person mentioned in subsections (1) and (2) again becomes eligible to receive pharmaceutical supplement under section 28 on the later of the following days:

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- (a) the day on which the person returns to Australia;
- (b) the day on which the person notifies the Commission of the person's return to Australia.

When pharmaceutical supplement is not payable

- (4) Even though a person is eligible for pharmaceutical supplement under section 28, the supplement is not payable to the person if:
 - (a) the person is receiving veterans supplement under section 118A of the *Veterans' Entitlements Act 1986*; or
 - (b) the person is receiving MRCA supplement under section 300 of the *Military Rehabilitation and Compensation Act 2004*; or
 - (c) the person is receiving a pharmaceutical allowance under the *Social Security Act 1991*; or
 - (d) the person is a wholly dependent partner of a deceased member (within the meaning of the *Military Rehabilitation and Compensation Act 2004*); or
 - (e) the person is receiving a social security payment (within the meaning of the *Social Security Act 1991*) for which a pension supplement amount (within the meaning of that Act) is used to work out the rate of the payment; or
 - (f) the person is receiving a pension under Part II or IV of the *Veterans' Entitlements Act 1986* at a rate determined under or by reference to subsection 30(1) of that Act; or
 - (g) the person is receiving a service pension (within the meaning of the *Veterans' Entitlements Act 1986*); or
 - (h) the person is receiving a veteran payment made under an instrument made under section 45SB of the *Veterans' Entitlements Act 1986*; or
 - (i) the person is receiving pharmaceutical supplement under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.

30 Rate of pharmaceutical supplement

The rate of pharmaceutical supplement that is payable under section 28 is the rate of veterans supplement that is payable from time to time under section 118C of the *Veterans' Entitlements Act 1986*.

31 Payment of pharmaceutical supplement

A person's pharmaceutical supplement under section 28 is payable on each pension payday (within the meaning of subsection 5Q(1) of the *Veterans' Entitlements Act 1986*) on which:

- (a) the person is eligible for the pharmaceutical supplement; and
- (b) the pharmaceutical supplement is payable to the person.

Part 5 Review of decisions

Division 1 Introduction

Section 32

Part 5—Review of decisions

Division 1—Introduction

32 Simplified outline of this Part

This Part allows certain decisions under this Act to be reviewed by the Commission and by the Administrative Appeals Tribunal.

Division 2—Review by Commission

33 Request for review

- (1) A claimant who is dissatisfied with:
 - (a) a decision of the Commission in relation to a claim under section 9 for a determination that the claimant is an eligible person; or
 - (b) a decision of the Commission under section 12 revoking a determination that the claimant is an eligible person; or
 - (c) a decision of the Commission in relation to a claim under section 24 for a determination that the claimant 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 8.

34 Review by Commission

- (1) If a request for review of a decision is made in accordance with section 33, 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.

Section 35

35 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.

36 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 35(2).

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

37 Withdrawal of request for review

- (1) A person who requests a review under section 33 may, at any time before the Commission determines the request, withdraw the request by giving written notice to the Commission in accordance with section 8.
- (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 33(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 3—Review by Administrative Appeals Tribunal

38 Review by Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Commission under section 34 to affirm a decision or to set it aside and substitute another decision for it.

Part 6—Administration and enforcement

Division 1—Introduction

39 Simplified outline of this Part

This Part deals with administrative and enforcement matters.

Division 2 deals with administrative matters in relation to the Commission (such as the delegation of the Commission's functions and powers).

Division 3 sets out provisions for obtaining and giving information. The Division includes provisions giving the Commission power to obtain information and documents and to require persons to answer questions. It also includes a provision allowing the Secretary or an employee of the Department to provide information to another Department or authority for the purposes of that Department or authority.

Division 4 establishes offences under this Act (such as offences relating to making false or misleading statements).

Division 5 deals with the recovery of amounts paid because of false or misleading statements, the interest payable on those amounts and the reduction of payments due to previous overpayments.

Division 6 deals with the recovery of the cost of treatment.

Division 7 deals with the recovery of overpayments of pharmaceutical supplement.

Division 2—General

40 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.

41 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.

42 Delegation

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

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- (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 3—Obtaining and giving information etc.

43 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.

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- (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 46).
- (8) This section binds the Crown in each of its capacities, but does not make the Crown liable to be prosecuted for an offence.

44 Failure to comply with a notice

- (1) A person commits an offence if the person fails to comply with a notice under section 43.

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*).

45 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 43 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:
- (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.

46 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 4—Offences

47 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).

- (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.

48 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.

49 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:
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- (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.

50 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.

51 Practitioners receiving bribes etc.

A person commits an offence if:

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

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

Penalty: 120 penalty units or imprisonment for 2 years.

52 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*.

53 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;

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(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.

54 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.

55 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 the treatment provider 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), the following 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 5—Recovery of amounts paid because of false or misleading statements

56 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 14(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.

57 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 56; 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 56; 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*.

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- (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).

58 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 14(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.

Division 6—Recovery of cost of treatment

59 Recovery of cost of treatment

Section 93 of the *Veterans' Entitlements Act 1986* applies to the provision of treatment under this Act in a corresponding way to the way that section applies to the provision of treatment under Part V of that Act.

Division 7—Recovery of overpayments of pharmaceutical supplement

60 Recovery of overpayments of pharmaceutical supplement

- (1) This section applies if a person has been paid an amount of pharmaceutical supplement under Part 4 that should not have been paid.
- (2) The amount is recoverable, in a court of competent jurisdiction, as a debt due to the Commonwealth from:
 - (a) the person; or
 - (b) the estate of that person.
- (3) The amount may be deducted from an amount that is payable to the person under this Act.

Part 7—Miscellaneous

61 Simplified outline of this Part

This Part deals with miscellaneous matters and includes an appropriation provision and a general rule-making power.

62 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 14(4)); and
- (b) costs the Commission has accepted financial responsibility for as mentioned in section 15; and
- (c) travelling expenses payable under Part 3; and
- (d) pharmaceutical supplement under Part 4.

63 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;

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- (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
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*[Minister's second reading speech made in—
House of Representatives on 14 February 2019
Senate on 2 April 2019]*

(23/19)
