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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Australian Participants in British
Nuclear Tests (Treatment) Bill 2006**

No. , 2006

(Veterans' Affairs)

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

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1 **A Bill for an Act to provide for testing for and**
2 **treatment of malignant neoplasia in Australian**
3 **participants in British nuclear tests, and for other**
4 **purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**
7

8 **1 Short title**

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

Section 2

1 **2 Commencement**

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

3 **3 Extension to external Territories**

4 This Act extends to every external Territory.

5 **4 Definitions**

6 (1) In this Act:

7 ***approved pharmaceutical scheme*** means an approved scheme,
8 within the meaning of section 91 of the *Veterans' Entitlements Act*
9 1986, that is in force.

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

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

14 ***dishonestly*** has the meaning given by subsection (2).

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

17 ***hospital or other institution*** includes the following:

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

23 ***medical service provider*** means a person:

- 24 (a) who is a pathology practitioner; or
25 (b) who is a proprietor of premises at which pathology services
26 are rendered; or
27 (c) who is a proprietor of a hospital or other institution that is not
28 operated by the Commonwealth, a State or a Territory; or

1 (d) who is acting on behalf of a proprietor of such a hospital or
2 other institution.

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

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

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

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

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

16 **proprietor** means:

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

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

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

30 **testing** means conducting a recognised medical test to identify
31 malignant neoplasia (whether or not the person being tested has
32 already been tested for, or diagnosed with, malignant neoplasia),

Section 5

1 but does not include conducting a test that replicates an existing
2 community-wide government screening program.

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

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

8 (2) For the purposes of this Act, a person engages in conduct
9 **dishonestly** if:

- 10 (a) the person engages in conduct; and
11 (b) the conduct is dishonest according to the standards of
12 ordinary people; and
13 (c) the defendant knows the conduct is dishonest according to
14 the standards of ordinary people.

15 **5 Meaning of *nuclear test participant* etc.**

16 (1) A person is a ***nuclear test participant*** if the person:

- 17 (a) was present in a nuclear test area at any time during:
18 (i) if the area was the Monte Bello Islands area—the period
19 from the beginning of 3 October 1952 to the end of
20 19 June 1958; or
21 (ii) if the area was the Emu Field area—the period from the
22 beginning of 15 October 1953 to the end of 25 October
23 1955; or
24 (iii) if the area was the Maralinga area—the period from the
25 beginning of 27 September 1956 to the end of 30 April
26 1965; and
27 (b) was, at that time:
28 (i) a member of the Australian Defence Force; or
29 (ii) an employee of the Commonwealth; or
30 (iii) a person who, under a contract with the Commonwealth,
31 provided construction, maintenance or support services
32 relating to the conduct of nuclear tests in that nuclear
33 test area during that period; and
34 (c) was, at that time, an Australian resident.

- 1 (2) A person is a **nuclear test participant** if the person:
- 2 (a) was involved in the transport, recovery, maintenance or
- 3 cleaning of a vessel, vehicle, aircraft or equipment that was
- 4 contaminated as a result of its use in a nuclear test area, being
- 5 involvement that occurred at any time during:
- 6 (i) if the area was the Monte Bello Islands area—the period
- 7 from the beginning of 3 October 1952 to the end of
- 8 19 July 1956; or
- 9 (ii) if the area was the Emu Field area—the period from the
- 10 beginning of 15 October 1953 to the end of
- 11 25 November 1953; or
- 12 (iii) if the area was the Maralinga area—the period from the
- 13 beginning of 27 September 1956 to the end of 30 May
- 14 1963; and
- 15 (b) was, at that time:
- 16 (i) a member of the Australian Defence Force; or
- 17 (ii) an employee of the Commonwealth; or
- 18 (iii) a person who, under a contract with the Commonwealth,
- 19 provided construction, maintenance or support services
- 20 relating to the conduct of nuclear tests in that nuclear
- 21 test area during that period; and
- 22 (c) was, at that time, an Australian resident.
- 23 (3) A person is a **nuclear test participant** if:
- 24 (a) at any time during the period from the beginning of
- 25 3 October 1952 to the end of 31 October 1957, the person
- 26 flew in an aircraft of the Royal Australian Air Force or the
- 27 Royal Air Force; and
- 28 (b) at the time the person flew in the aircraft, the aircraft:
- 29 (i) was used in measuring fallout from nuclear tests
- 30 conducted in a nuclear test area; and
- 31 (ii) was contaminated by the fallout; and
- 32 (c) at that time, the person was:
- 33 (i) a member of the Australian Defence Force; and
- 34 (ii) an Australian resident.
- 35 (4) A **nuclear test area** is any of the areas described in the following
- 36 table:
-

Section 6

1

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

2

3 **6 Procedures for making claims etc.**

4

(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).

5

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(2) The Secretary may, by legislative instrument, determine the procedures for making claims and applications, and lodging documents.

9

10

1

2 **Part 2—Treatment of malignant neoplasia**

3 **Division 1—Eligibility to be provided with treatment**

4 **7 Eligibility**

5 (1) A person is eligible to be provided with treatment under this Act if
6 the person:

- 7 (a) is a nuclear test participant; and
8 (b) is an Australian resident.

9 (2) However, a person is not eligible to be provided with treatment
10 under this Act if the person is:

- 11 (a) eligible to be provided with the treatment under Part V of the
12 *Veterans' Entitlements Act 1986*; or
13 (b) entitled to compensation, in respect of the cost of the
14 treatment, under:
15 (i) the *Safety, Rehabilitation and Compensation Act 1988*;
16 or
17 (ii) any law relating to workers' compensation; or
18 (c) would be compensated, in respect of the cost of the
19 treatment, under the administrative scheme that:
20 (i) that was established in 1986 for compensation relating
21 to British nuclear tests in Australia; and
22 (ii) for which the Minister administering Part II of the
23 *Safety, Rehabilitation and Compensation Act 1988* is
24 responsible.

25 **8 Claims for eligibility**

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

Section 9

1 **9 Withdrawal of claims**

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

7 **10 Determination of claims**

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

12 **11 Revocation of determination of eligibility**

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

1

Division 2—Provision of treatment**12 Provision of treatment**

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

13 Approval of treatment already provided

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

Section 14

1 **14 Limits on provision of treatment**

2 (1) Nothing in this Act is taken to:

3 (a) impose a duty on the Commission to arrange for the
4 provision of; or

5 (b) confer a right on a person to be provided, under arrangements
6 made by the Commission, with;

7 treatment for particular malignant neoplasia, treatment of a
8 particular kind for malignant neoplasia or treatment for malignant
9 neoplasia outside Australia.

10 (2) Subject to subsection 12(1), nothing in this Act is taken to confer
11 on a person a right to be provided with treatment for malignant
12 neoplasia:

13 (a) by the Commonwealth; or

14 (b) by the Commission otherwise than to the extent that, and in a
15 manner that, the treatment may be provided under
16 arrangements made by, or with the approval of, the
17 Commission.

18 **15 Treatment at hospitals and other institutions**

19 For the purposes of this Part, the Commission may:

20 (a) enter into arrangements with the appropriate authority of the
21 Commonwealth, a State or a Territory for the provision of
22 care and welfare, at a public hospital or other institution
23 operated by the Commonwealth, State or Territory, for
24 eligible persons; and

25 (b) enter into arrangements with any other body operating a
26 hospital or other institution for the provision of care and
27 welfare at that hospital or institution for eligible persons.

28 **16 Application and modification of the Treatment Principles**

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

Section 16

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

Section 17

1 **17 Application and modification of the Repatriation Private Patient**
2 **Principles**

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

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

9 **18 Application and modification of an approved pharmaceutical**
10 **scheme**

- 11 (1) An approved pharmaceutical scheme, or, if such a scheme has been
12 modified under this section, that scheme as so modified, applies to
13 the provision of pharmaceutical benefits in connection with
14 treatment of eligible persons.
- 15 (2) The Commission may, in writing, prepare modifications of an
16 approved pharmaceutical scheme in its application for the purposes
17 of this Act.
- 18 (3) Without limiting subsection (2), the modifications may specify
19 classes of eligible persons for whom:
- 20 (a) pharmaceutical benefits; or
21 (b) pharmaceutical benefits of a kind specified in the instrument;
22 or
23 (c) pharmaceutical benefits included in a class of pharmaceutical
24 benefits specified in the instrument;
- 25 will not be provided, or will not be provided in circumstances
26 specified or described in the instrument.
- 27 (4) The Commission may, in writing, prepare variations or revocations
28 of the modifications at any time.
- 29 (5) A modification, or a variation or revocation of a modification, has
30 no effect unless the Minister has, in writing, approved the
31 instrument making the modification, variation or revocation.
- 32 (6) A modification, or a variation or revocation of a modification,
33 prepared by the Commission and approved by the Minister is a

Part 2 Treatment of malignant neoplasia

Division 2 Provision of treatment

Section 18

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

1

Part 3—Travelling expenses

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3

19 Entitlement to travelling expenses

4

5

(1) If:

6

(a) an eligible person travels for the purpose of obtaining treatment; and

7

8

(b) the Commission approves the travel; and

9

(c) such conditions as are prescribed are satisfied;

10

the person is entitled to be paid such travelling expenses, in connection with the travel, as are prescribed.

11

12

(2) If:

13

(a) a person travels for the purpose of accompanying a person referred to in subsection (1) as his or her attendant; and

14

15

(b) the Commission authorises the travel for that purpose; and

16

(c) such conditions as are prescribed are satisfied;

17

the person is entitled to be paid such travelling expenses, in connection with the travel, as are prescribed.

18

19

(3) Travelling expenses are not payable under this section in respect of travel outside Australia.

20

20 Advances of travelling expenses

21

22

(1) If the Commission is satisfied:

23

(a) that a person may reasonably be expected to become entitled to be paid travelling expenses under this section; and

24

25

(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;

26

27

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.

28

29

30

Section 21

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

9 **21 Claims for travelling expenses**

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

20 **22 Withdrawal of claims**

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

26 **23 Determination of claims**

- 27 (1) The Commission is to determine claims under section 21.
28 Note: Rejections of claims are reviewable under Part 4.
- 29 (2) The Commission must give to the claimant written notice of its
30 determination.

1

2 **Part 4—Review of decisions**

3 **Division 1—Review by Commission**

4 **24 Request for review**

5 (1) A claimant who is dissatisfied with:

- 6 (a) a decision of the Commission in relation to a claim under
7 section 8 for a determination that he or she is an eligible
8 person; or
9 (b) a decision of the Commission under section 11 revoking a
10 determination that he or she is an eligible person; or
11 (c) a decision of the Commission in relation to a claim under
12 section 21 for a determination that he or she is entitled to be
13 paid travelling expenses under Part 3;
14 may request the Commission to review the decision.

15 (2) The request:

- 16 (a) must be made within 3 months after the claimant was notified
17 of the decision; and
18 (b) must be made in accordance with section 6.

19 **25 Review by Commission**

20 (1) If a request for review of a decision is made in accordance with
21 section 24, the Commission must:

- 22 (a) review the decision; and
23 (b) affirm the decision or set it aside.

24 (2) If the Commission sets the decision aside it must substitute a new
25 decision in accordance with this Act.

26 (3) If the Commission has delegated its powers under this section to
27 the person who made the decision under review, that person must
28 not review the decision.

Section 26

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.

1

2 **Division 2—Review by Administrative Appeals Tribunal**

3 **29 Review by Administrative Appeals Tribunal**

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

1

2 **Part 5—Administration and enforcement**

3 **Division 1—General**

4 **30 Additional functions of Commission**

5 (1) The functions of the Commission include:

6 (a) to arrange for the provision of treatment for eligible persons
7 under this Act; and

8 (b) to administer payment of travelling expenses under Part 3.

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

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

13 **31 Commission not bound by technicalities**

14 In making a decision under this Act, the Commission:

15 (a) is not bound to act in a formal manner and is not bound by
16 any rules of evidence, but may inform itself on any matter in
17 such manner as it thinks just; and

18 (b) may act according to substantial justice and the substantial
19 merits of the case, without regard to legal form and
20 technicalities; and

21 (c) without limiting paragraph (a) or (b), must take into account
22 any difficulties that, for any reason, lie in the way of
23 ascertaining the existence of any fact, matter, cause or
24 circumstance, including any reason attributable to:

25 (i) the effects of the passage of time, including the effect of
26 the passage of time on the availability of witnesses; and

27 (ii) the absence of, or a deficiency in, relevant official
28 records.

1 **32 Delegation**

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

5 (a) a member of the Commission; or

6 (b) a staff member assisting the Commission; or

7 (c) a consultant to, or an employee of a consultant to, the
8 Commission; or

9 (d) a person who is engaged under the *Public Service Act 1999*
10 and performing duties in the Department.

Section 33

1

2 **Division 2—Obtaining and giving information etc.**

3 **33 Commission may obtain information etc.**

4 (1) The Commission may give a written notice to any person requiring
5 the person, for the purposes of this Act:

6 (a) to provide to the Commission (or a specified staff member
7 assisting the Commission) such information as the
8 Commission requires; or

9 (b) to produce to the Commission (or a specified staff member
10 assisting the Commission) any documents in the custody or
11 under the control of the person; or

12 (c) to appear before a specified staff member assisting the
13 Commission to answer questions.

14 (2) To avoid doubt, the person given the notice may be a person
15 employed:

16 (a) in, or in connection with, a Department of the
17 Commonwealth, a State or Territory; or

18 (b) by any authority of the Commonwealth, a State or Territory.

19 (3) The notice must specify:

20 (a) if paragraph (1)(a) or (b) applies:

21 (i) the period within which the person must comply with
22 the notice; and

23 (ii) the manner in which the person must comply with the
24 notice; or

25 (b) if paragraph (1)(c) applies:

26 (i) the time at which the person must appear before the
27 staff member; and

28 (ii) the place at which the person must appear before the
29 staff member.

30 (4) The specified period or the specified time mentioned in
31 subsection (3) must be at least 14 days after the notice is given.

- 1 (5) The Commission may require the information or answers provided
2 under paragraph (1)(c) to be verified by, or given on, oath or
3 affirmation and either orally or in writing.
- 4 (6) A staff member to whom information or answers are verified or
5 given may administer the oath or affirmation.
- 6 (7) This section does not require a person to give information, produce
7 a document or give evidence to the extent that, in doing so, the
8 person would contravene a law of the Commonwealth (not being a
9 law of a Territory).
- 10 Note: A law of a State or Territory cannot prevent a person from giving
11 information, producing documents or giving evidence for the purposes
12 of this Act (see section 36).
- 13 (8) This section binds the Crown in each of its capacities, but does not
14 make the Crown liable to be prosecuted for an offence.

15 **34 Failure to comply with a notice**

- 16 (1) A person commits an offence if the person fails to comply with a
17 notice under section 33.
- 18 Penalty: 10 penalty units.
- 19 (2) An offence under subsection (1) is an offence of strict liability.
- 20 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- 21 (3) Subsection (1) does not apply to the extent that the person is not
22 capable of complying with the notice.
- 23 Note: The defendant bears an evidential burden in relation to the matter in
24 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

25 **35 Self-incrimination**

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

Part 5 Administration and enforcement

Division 2 Obtaining and giving information etc.

Section 36

- 1 (a) giving the information or evidence, or producing the
2 document or copy; or
3 (b) any information, document or thing obtained as a direct or
4 indirect consequence of giving the information or evidence,
5 or producing the document or copy;
6 is not admissible in evidence against the individual in any
7 proceedings, other than proceedings for an offence under
8 section 137.1 or 137.2 of the *Criminal Code* that relates to this Act.

9 **36 Giving information**

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

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2 **Division 3—Offences**

3 **37 False or misleading statements or documents relating to**
4 **treatment**

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

16 Penalty: 20 penalty units.

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

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

- 19 (3) Subsection (1) does not apply if:
20 (a) the person did not know, and could not reasonably be
21 expected to have known, that the statement or document was
22 false or misleading in a material particular; or
23 (b) the person did not know, and could not reasonably be
24 expected to have known, that the statement or document was
25 capable of being used in connection with a claim for
26 treatment provided under this Act.

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

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

Section 38

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

4 **38 Medical service providers causing detriment to others**

- 5 A person commits an offence if:
6 (a) the person is a medical service provider; and
7 (b) the person engages in conduct or omits to engage in conduct;
8 and
9 (c) the conduct or omission causes detriment to another person;
10 and
11 (d) the person engages in the conduct or omits to engage in the
12 conduct intending:
13 (i) the conduct or omission to cause detriment to the other
14 person; and
15 (ii) to encourage the other person to request a pathology
16 service in respect of treatment provided under this Act;
17 and
18 (e) the other person does not consent to the conduct or omission.

19 Penalty: 120 penalty units or imprisonment for 2 years.

20 **39 Medical service providers threatening detriment**

- 21 (1) A person commits an offence if:
22 (a) the person is a medical service provider; and
23 (b) the medical service provider makes a threat to another person
24 to cause detriment to the other person or a third person; and
25 (c) the medical service provider is reckless as to causing the
26 other person or the third person to fear that the threat will be
27 carried out; and
28 (d) the medical service provider makes the threat intending to
29 encourage the other person to request a pathology service in
30 respect of treatment provided under this Act.

31 Penalty: 120 penalty units or imprisonment for 2 years.

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

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

6 **40 Bribery by medical service providers**

7 A person commits an offence if:

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

19 Penalty: 120 penalty units or imprisonment for 2 years.

20 **41 Practitioners receiving bribes etc.**

21 A person commits an offence if:

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

Section 42

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

3 Penalty: 120 penalty units or imprisonment for 2 years.

4 **42 Pathology practitioners making payments to requesting**
5 **practitioners**

- 6 (1) A person commits an offence if:
7 (a) the person is a pathology practitioner; and
8 (b) another practitioner (the *requesting practitioner*) requests the
9 pathology practitioner to provide pathology services to a
10 person (the *patient*); and
11 (c) the patient is an eligible person; and
12 (d) the pathology practitioner provides those services; and
13 (e) the pathology practitioner makes a payment (either directly
14 or indirectly) to the requesting practitioner either:
15 (i) in respect of other services provided by the requesting
16 practitioner to the patient in connection with the request;
17 or
18 (ii) in respect of the use of the requesting practitioner's staff
19 in connection with taking pathology specimens from the
20 patient.

21 Penalty: 60 penalty units.

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

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

24 **43 Pathology practitioners providing pathology services to persons**
25 **with whom they have arrangements**

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

Section 44

- 1 (whether or not the arrangement involves paying money or
2 providing other consideration); and
3 (c) the other practitioner requests the person to provide
4 pathology services in respect of treatment under this Act; and
5 (d) the person provides those services while the arrangement is
6 in force.

7 Penalty: 120 penalty units or imprisonment for 2 years.

- 8 (2) A person commits an offence if:
9 (a) the person is a pathology practitioner; and
10 (b) the person has entered an arrangement with another
11 practitioner:
12 (i) to share a particular space in a building; or
13 (ii) for one of them to provide space in a building for the
14 other to use or occupy; or
15 (iii) for one of them to permit the other to use or occupy the
16 building; and
17 (c) the charges payable under the arrangement are not charges
18 fixed at normal commercial rates; and
19 (d) the other practitioner requests the person to provide
20 pathology services in respect of treatment under this Act; and
21 (e) the person provides those services while the arrangement is
22 in force.

23 Penalty: 120 penalty units or imprisonment for 2 years.

24 **44 Providing staff to be used in pathology services**

- 25 A person commits an offence if:
26 (a) the person is a pathology practitioner; and
27 (b) the person provides nursing or other staff at the premises of
28 another practitioner (whether the staff are present full-time,
29 part-time or from time to time); and
30 (c) the person intends the staff to be used in taking pathology
31 specimens in respect of treatment under this Act.

32 Penalty: 120 penalty units or imprisonment for 2 years.

Section 45

1 **45 Counselling statements inadmissible as evidence**

2 (1) This section applies if:

- 3 (a) a person (the *treatment provider*) has provided treatment
4 under this Act; and
5 (b) the treatment provider has been counselled by a staff member
6 assisting the Commission with respect to providing treatment
7 under this Act; and
8 (c) the treatment provider makes a statement during the
9 counselling.

10 (2) The statement is inadmissible as evidence against the treatment
11 provider in proceedings prosecuting him or her for an offence
12 mentioned in subsection (3) unless:

- 13 (a) the treatment provider consents to the statement being
14 admitted as evidence in the proceedings; or
15 (b) both of the following apply:
16 (i) evidence of another statement made by the treatment
17 provider during such counselling is admitted on behalf
18 of the provider;
19 (ii) evidence of the statement mentioned in paragraph (1)(c)
20 is adduced to refute evidence of that other statement.

21 (3) For the purposes of subsection (2), these are the offences:

- 22 (a) an offence under this Division;
23 (b) an offence against:
24 (i) section 6 of the *Crimes Act 1914* (accessory after the
25 fact); or
26 (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*
27 (attempt, incitement or conspiracy);
28 that relates to an offence under this Division.

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

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

4 **46 Recovery of amounts paid because of false or misleading**
5 **statements**

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

24 **47 Interest payable on amounts paid because of false or misleading**
25 **statements**

- 26 (1) This section applies if:
27 (a) an amount (the *principal sum*) is recoverable as a debt due to
28 the Commonwealth from a person or estate under section 46;
29 and
30 (b) the Commission has served a notice on the person or estate
31 (as the case requires) claiming the amount as a debt due to
32 the Commonwealth; and

Part 5 Administration and enforcement

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

Section 47

- 1 (c) an arrangement has been entered into between the
2 Commission and the person or estate (as the case requires) to
3 repay the principal sum within the following period (the
4 *relevant period*):
5 (i) the period of 3 months from the day the notice is served;
6 (ii) such longer period as the Commission allows; and
7 (d) there has been a default (whether before or after the end of
8 that period) in repaying all or part of the principal sum as
9 required by the arrangement.
- 10 (2) This section applies if:
11 (a) an amount (the *principal sum*) is recoverable as a debt due to
12 the Commonwealth from a person or estate under section 46;
13 and
14 (b) the Commission has served a notice on the person or estate
15 (as the case requires) claiming the amount as a debt due to
16 the Commonwealth; and
17 (c) an arrangement to repay the principal sum has not been
18 entered into within the following period (the *relevant*
19 *period*):
20 (i) the period of 3 months from the day the notice is served;
21 (ii) such longer period as the Commission allows; and
22 (d) all or part of the principal sum remains unpaid.
- 23 (3) Interest is payable on the amount of the principal sum that remains
24 unpaid from time to time.
- 25 (4) The interest is payable from:
26 (a) the day after the end of the relevant period; or
27 (b) such other later day ordered by a court in any proceedings
28 instituted by the Commonwealth to recover an amount due
29 under this section.
- 30 (5) The interest is payable at the rate prescribed from time to time for
31 the purposes of subsection 129AC(2) of the *Health Insurance Act*
32 *1973*.
- 33 (6) The interest is recoverable, in a court of competent jurisdiction, as
34 a debt due to the Commonwealth from the person or estate (as the
35 case requires).
-

1 **48 Reduction in payments because of previous overpayments**

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

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Part 6—Miscellaneous

3

4

49 Appropriation

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

6

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(a) amounts payable for provision of treatment under this Act
(including amounts payable by way of reimbursement under
subsection 13(4)); and

8

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(b) travelling expenses payable under Part 3.

11

50 Regulations

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The Governor-General may make regulations prescribing matters:

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(a) required or permitted by this Act to be prescribed; or

14

(b) necessary or convenient to be prescribed for carrying out or
giving effect to this Act.

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