

5. After section nineteen of the *Acts Interpretation Act* 1901-1918 the following section is inserted :—

Administration
of Acts.

“19A. Where in any Act, whether passed before or after the commencement of this section, it is provided that the Act shall be administered by a specified Minister of State of the Commonwealth, or shall be administered, controlled or carried into effect by a specified Department of State of the Commonwealth—

(a) the reference to that Minister shall be read as a reference to any Minister to whom the administration of the Act is allotted by order of the Governor-General and shall be deemed to include any Minister or Member of the Executive Council for the time being acting for and on behalf of the Minister to whom the administration of the Act is so allotted ; and

(b) the reference to that Department shall be read as a reference to any Department to which the administration of the Act is allotted by any such order.”

Expressions
in instrument
under an Act.

6. Section thirty-two of the *Acts Interpretation Act* 1901-1918 is amended by inserting at the end thereof the following sub-section :—

“(2.) Where an Act confers power to make, grant or issue any instrument (including rules, regulations or by-laws) and expressions which are defined in this Act are contained in the instrument, the provisions of this Act shall apply to the interpretation of those expressions.”.

COMMONWEALTH EMPLOYEES' COMPENSATION.

No. 24 of 1930.

An Act relating to Compensation to Employees of
the Commonwealth for Injuries suffered in
the course of their Employment.

[Assented to 14th August, 1930.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

Short title.

1. This Act may be cited as the *Commonwealth Employees' Compensation Act* 1930.

2. This Act shall commence on a date to be fixed by Proclamation. Commencement.

3. The *Commonwealth Workmen's Compensation Act* 1912 is repealed: Repeal.

Provided that nothing in this section shall affect any right, privilege, obligation or liability acquired, accrued or incurred under that Act prior to the commencement of this Act:

Provided further that that Act shall continue in force to the extent necessary for the determination of, or the adjudication upon, any such right, privilege, obligation or liability.

4.—(1.) In this Act, unless the contrary intention appears—

Definitions.

“Commissioner” means the Commissioner for Employees' Compensation;

“Commonwealth” includes any Territory which is part of the Commonwealth;

“County Court” means a County Court, District Court, or Local Court of any State, or Territory being part of the Commonwealth, or any Court exercising in any part of the Commonwealth a limited civil jurisdiction and presided over by a Judge or a Police, Stipendiary or Special Magistrate;

“Dependants” means such of the members of an employee's family as were wholly or in part dependent upon the earnings of the employee at the time of his death, or who would, but for the incapacity due to the accident, have been so dependent; and where the employee—

(a) being the parent or grandparent of an illegitimate child, leaves the child so dependent upon his earnings; or

(b) being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, includes such an illegitimate child and parent or grandparent respectively;

“Employee” means any officer who is subject to the *Commonwealth Public Service Act* 1922–1930 and includes any temporary employee and any officer or employee to whom the Governor-General has declared that that Act shall not apply and any person who has entered into or works under a contract of service or apprenticeship with the Commonwealth, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing, but does not include—

(a) an outworker; or

(b) any member of the Naval, Military or Air Forces of the Commonwealth;

"Member of a family" means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister, adopted child or mother-in-law ;

"Outworker" means a person to whom articles or materials are given out to be treated or manufactured in his own home or on other premises not under the control or management of the Commonwealth.

Commissioner.

5.—(1.) For the purposes of this Act there shall be a Commissioner for Employees' Compensation.

(2.) The Secretary to the Treasury shall be *ex officio* Commissioner for Employees' Compensation.

Powers and
functions of
Commissioner.

6.—(1.) The Commissioner shall have power to examine, hear and determine all matters and questions arising under this Act and the Regulations.

(2.) The Commissioner may reconsider any such determination and may alter, amend or revoke any such determination.

(3.) In the determination of matters and questions, the Commissioner shall be guided by equity, good conscience and the substantial merits of the case without regard to technicalities or legal precedent and shall not be bound by any rules of evidence.

(4.) In particular, the power of the Commissioner shall extend to determining—

- (a) the question whether an injury received by an employee entitles him to compensation under this Act ;
- (b) the existence and degree of incapacity for work by reason of injury ;
- (c) the permanence of incapacity by reason of injury ;
- (d) the degree of diminution of earning capacity by reason of injury ;
- (e) the amount of the weekly pay of an employee ;
- (f) the existence, for the purposes of this Act, of the relationship of any member of the family of an employee as defined in this Act ; and
- (g) the existence and extent of dependency.

Delegation by
Commissioner.

7.—(1.) The Commissioner may by writing under his hand delegate all or any of his powers and functions (except this power of delegation).

(2.) Any delegation by the Commissioner under this section shall be revocable in writing at will and no delegation shall prevent the exercise of any power or function by the Commissioner.

8. Subject to section twenty of this Act, no action, suit or proceeding shall be instituted, brought or maintained against the Commonwealth or the Commissioner or any delegate of the Commissioner in respect of any action or determination taken or made under this Act.

No action maintainable against Commissioner.

9.—(1.) If personal injury by accident arising out of and in the course of his employment is caused to an employee of the Commonwealth, the Commonwealth shall, subject to this Act, be liable to pay compensation in accordance with the First Schedule to this Act :

Compensation for personal injuries to employees.

Provided that—

- (a) the employee shall not be entitled to recover compensation from the Commonwealth or any person or to receive from the Commonwealth any payment in respect of the accident, or in respect of the illness or incapacity arising from the accident, both independently of and also under this Act ; but subject to this paragraph this Act shall not affect any civil liability of the Commonwealth under any other law ;
- (b) if it is proved that the injury to an employee is attributable to his serious and wilful misconduct, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed ;
- (c) in the case of the death of an employee leaving no dependants, no compensation shall be payable under this Act other than for medical attendance and funeral expenses ;
- (d) if it appears that the claimant has a claim against the Commonwealth or any person for compensation or for any payment in respect of the injury under any other law in force in the Commonwealth or any other place, compensation under this Act shall only be allowed upon the claimant undertaking not to claim compensation for the injury under any such law ; and
- (e) where the employee continues in the service of the Commonwealth after the injury, any pay (not including allowances paid in respect of children of the employee) received by him from the Commonwealth shall be deducted from any compensation payable under this Act in respect of the same period.

(2.) If any question arises, in any proceedings under this Act, as to the liability to pay compensation under this Act (including any question as to whether the person injured is an employee to whom this Act applies) or as to the amount or duration of compensation under this Act, the question shall, subject to the provisions of the First Schedule to this Act, be determined by the Commissioner.

(3.) Any undertaking given in pursuance of paragraph (d) of the proviso to sub-section (1.) of this section shall have effect as a contract between the claimant and the Commonwealth or person, as the case requires, from whom the compensation or payment is claimed.

Compensation
to employee
affected by or
dying from
certain
industrial
diseases.

10.—(1.) Where—

- (a) an employee is suffering from any of the diseases mentioned in the first column of the Second Schedule to this Act and is thereby incapacitated from earning full wages at the work at which he was employed ; or
- (b) the death of an employee is caused by any of those diseases, and the disease was caused, within twelve months prior to the date of incapacity, by the employment in which the employee was engaged by the Commonwealth, the Commonwealth shall, subject to this Act, be liable to pay to the employee or his dependants compensation in accordance with this Act as if the disease were a personal injury by accident within the meaning of the last preceding section.

(2.) If the Commissioner is satisfied that the employee, at the time of entering the employment of the Commonwealth, wilfully and falsely represented himself as not having previously suffered from the disease, compensation shall not be payable.

(3.) A claimant for compensation under this section shall, if so required, furnish the Commissioner with such information as to the names and addresses of other employers of the employee as the claimant possesses.

(4.) If the disease is of such a nature as is contracted by a gradual process, the Commonwealth shall be entitled to be indemnified by any other employers (if those employers are also liable to pay compensation) who employed the employee during the period of twelve months immediately preceding the incapacity in the employment to which the disease is due, and all questions as to the right to, and amount of, any such indemnity shall in default of agreement be settled by arbitration or by action in any County Court.

(5.) If the employee at the time of, or immediately before, the incapacity was employed in any process mentioned in the second column of the Second Schedule to this Act and produces a certificate from a duly qualified medical practitioner that the disease contracted is the disease or one of the diseases in the first column set opposite the description of the process, that disease shall, in the absence of proof to the contrary, be deemed to have been caused by the employment in which the employee was engaged.

Medical
benefits.

11. In addition to any compensation payable by the Commonwealth under this Act to, or in respect of, an employee, the Commonwealth shall pay the cost, not exceeding in any case the sum of One hundred pounds, of such medical, surgical and hospital treatment in relation to the injury as is, in the opinion of the Commissioner, reasonably necessary.

12. Where an employee sustains, by accident arising out of and in the course of his employment, any of the injuries specified in the first column of the Third Schedule to this Act, the compensation payable under this Act shall, when the injury results in total or partial incapacity, be the amount specified in the second column of that Schedule opposite the injury so sustained, less any amount received by the employee under the First Schedule to this Act during any period of his total incapacity arising from his injury.

Compensation
for certain
injuries.

13. Notwithstanding anything contained in this Act, an employee shall not, in respect of one accident, except where the injury results in total and permanent incapacity, be entitled to receive as compensation under this Act an amount exceeding Seven hundred and fifty pounds in addition to such expenses as are awarded to him under section eleven of this Act.

Maximum
compensation.

14. Upon the commencement of this Act, the terms and conditions which may be prescribed by regulation under the *Defence Act* 1903-1927 or under the *Naval Defence Act* 1910-1918 governing the employment of persons in a civil capacity under either of those Acts shall not include provision for the grant of compensation or other benefits in respect of personal injury by accident arising out of and in the course of the employment of such persons and any such provision in force at the commencement of this Act shall be of no effect:

Defence
civil
employees.

Provided that nothing in this section shall affect any grant of compensation or other benefits made under any such provision prior to the commencement of this Act.

15. Where in any determination made by the Public Service Arbitrator appointed under the *Arbitration (Public Service) Act* 1920-1929, provision is made for the grant of compensation or other benefits to employees in respect of personal injury by accident arising out of and in the course of their employment, any employee to whom the determination applies shall not be entitled to compensation or benefits both under the determination and under this Act but may elect to take compensation or benefits either under the determination or under this Act.

Compensation
under
determination
by Public
Service
Arbitrator.

16.—(1.) The Commissioner shall not admit a claim for compensation under this Act for an injury unless notice of the accident has been served upon him as soon as practicable after it has happened, and before the employee has voluntarily left the employment of the Commonwealth, and unless the claim for compensation has been made—

Time for to
proceeding

- (a) within six months from the occurrence of the accident; or
- (b) in case of death—within six months after advice of the death has been received by the claimant:

Provided always that—

- (i) the want of or any defect or inaccuracy in the notice shall not prevent consideration of the claim by the Commissioner if he finds that the Commonwealth is not prejudiced by the want, defect or inaccuracy, or that the want, defect or inaccuracy was occasioned by mistake, absence from Australia or other reasonable cause; and
- (ii) the failure to make a claim within the period above specified shall not prevent consideration of the claim by the Commissioner if he finds that the failure was occasioned by mistake, absence from Australia or other reasonable cause.

(2.) Notice in respect of any injury to which this Act applies shall contain the name and address of the person injured, and a statement in ordinary language of the cause of the injury and the date at which the accident happened.

(3.) The notice may be served by sending it by post in a registered letter properly addressed to the Permanent Head or Chief Officer of the Department or authority in or by which the employee was employed at the time of the accident, or by delivering it at the head office of the Department or authority or to the officer in charge of the work on which the employee was so employed, or in any other prescribed manner.

Remedies both
against the
Commonwealth
and a stranger.

17. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the Commonwealth to pay damages in respect thereof—

- (a) the employee may take proceedings against that person to recover damages and may also make a claim against the Commonwealth for such compensation, but shall not be entitled to recover both damages and compensation; and
- (b) if the employee has received compensation under this Act, the Commonwealth shall be entitled to be indemnified by the person so liable to pay damages, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be determined by a County Court.

Medical referees.

18.—(1.) The Governor-General may appoint any duly qualified medical practitioners to be medical referees for the purposes of this Act.

(2.) Medical referees shall be paid such fees as are prescribed.

(3.) The fees of medical referees shall be paid out of moneys provided by Parliament for the purpose.

(4.) A medical referee who has been employed as a medical practitioner in connexion with any case by or on behalf of the Commonwealth or an employee, or by any insurers interested, shall not act as a medical referee in that case.

19.—(1.) Where notice has been given of an injury to an employee, or any employee is receiving weekly payments under this Act, any such employee shall, if so required by the Commissioner, submit himself for examination by a medical referee or a medical board consisting of two or more medical referees, and if he refuses to submit himself to such examination, or in any way obstructs the examination, his right to compensation shall be suspended until the examination has taken place. Medical examinations.

(2.) Where an employee is required by the Commissioner to submit himself for examination by a medical board, the employee may, within the prescribed period after being so required, nominate a medical practitioner who shall thereupon be one of the members of that board.

(3.) An employee shall not be required to submit himself for medical examination otherwise than in accordance with this Act and the regulations or at more frequent intervals than are prescribed.

(4.) The medical referee, medical practitioner or medical board to whom any matter is referred shall, as prescribed, give a certificate as to the condition of the employee, and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and such other information as the Commissioner requires. Any such certificate given by a medical board shall be conclusive evidence as to the matters so certified.

(5.) The cost of conducting any examination required for the purposes of this section, and the expenses incurred by an employee in travelling to and from the place of examination, shall be paid by the Commonwealth.

20. Any person affected by any determination or action of the Commissioner under this Act may, within thirty days of the date of the determination or the taking of the action or within such extended time as the Court upon application in that behalf allows, appeal to a County Court against the determination or action and the Court shall have jurisdiction to hear and determine the appeal, and such appeal may be in the nature of a re-hearing. Appeals.

21. The Commissioner shall, as prescribed, furnish to the Minister correct returns specifying— Returns as to compensation.

- (a) the number of injuries in respect of which compensation has been paid under this Act during the previous year;
- (b) the amount of compensation paid during that year; and
- (c) such other particulars as are prescribed.

Application of
Act to
Commonwealth
authorities.

22.—(1.) The application of this Act shall extend to employees of such authorities under the Commonwealth as are prescribed.

(2.) Where the application of this Act is extended to employees of an authority under the Commonwealth, liability under this Act to pay compensation in respect of personal injury by accident arising out of and in the course of the employment of those employees shall, unless otherwise prescribed, be borne by that authority.

Regulations.

23. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Act and in particular for prescribing the procedure in regard to the medical examination of injured employees, the manner in which documents are to be furnished or served, and applications made, and the forms to be used for those purposes and as to fees and expenses to be paid for medical examinations and medical treatment.

THE SCHEDULES.

Section 2.

THE FIRST SCHEDULE.

SCALE AND CONDITIONS OF COMPENSATION.

(1.) The amount of compensation under this Act shall be—

(a) where death results from the injury—

(i.) if the employee leaves any dependants wholly dependent upon his earnings, a sum equal to one hundred and fifty-six times his weekly pay at the time of the injury, or the sum of Four hundred pounds, whichever of those sums is the larger, but not exceeding in any case Seven hundred and fifty pounds:

Provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, but so that the amount payable to the dependants upon the death of the employee shall not be less than Two hundred pounds;

(ii.) if the employee does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as is considered by the Commissioner to be reasonable and proportionate to the injury to the dependants; and

(iii.) if he leaves no dependants, the reasonable expenses of his burial, not exceeding Twenty-five pounds;

(b) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding two-thirds of the employee's weekly pay at the time of the injury, such weekly payment not to exceed Three pounds ten shillings:

Provided that as respects the weekly payments during total incapacity of an employee who is under twenty-one years of age at the date of the injury, and whose weekly pay is less than Thirty shillings, one hundred per centum shall be substituted for two-thirds of his weekly pay, but the weekly payment shall in no case exceed One pound; and

THE FIRST SCHEDULE—continued.

- (c) where total incapacity for work results from the injury, there shall be added to any amount payable under the foregoing provisions of this Schedule an amount of Seven shillings and Sixpence per week in respect of each child totally or mainly dependent upon the employee at the time of the injury who is under the age of fourteen years, and the payment of that amount shall be continued during such incapacity until the child in respect of whom the payment is received attains the age of sixteen years :

Provided that no payment shall be made under this sub-paragraph in respect of any children of the employee in respect of whom he is receiving any payment by way of child endowment independently of this Act.

(2.) For the purposes of the provisions of this Schedule, "Pay" means the salary or daily or weekly wage of the employee at the time of the injury, together with any amount paid as a fixed allowance of a permanent nature in addition to salary or wage but does not include any payment by way of child endowment.

(3.) In fixing the amount of the weekly payment, regard shall be had to any payment, allowance or benefit which the employee may receive from the Commonwealth during the period of his incapacity, and, in the case of partial incapacity, the weekly payment shall in no case exceed the difference between the amount of the weekly pay of the employee before the accident and the weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as the Commissioner thinks proper.

(4.) Where an employee has given notice of an accident, he shall, if so required by the Commissioner, submit himself for examination by a duly qualified medical practitioner provided and paid by the Commonwealth, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place.

(5.) The payment in the case of death shall, unless otherwise provided in this Schedule or by the Regulations, be paid to the Commissioner, and the sum so paid shall be invested or applied by the Commissioner, in such manner as he thinks fit, for the benefit of the persons entitled thereto :

Provided that, if so agreed, the payment in case of death shall, if the employee leaves no dependants, be made to his legal personal representative, or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

(6.) Where a weekly payment is payable under this Act to a person under any legal disability, the weekly payment shall be paid during the disability to the Commissioner, and dealt with by him, in such manner as he thinks fit, for the benefit of the person entitled thereto.

(7.) Any question as to who is a dependant, and the amount payable to each dependant, shall be settled by the Commissioner.

(8.) Where there are both total and partial dependants, the Commissioner may allot the compensation partly to the total and partly to the partial dependants.

(9.) Where, on application being made to the Commissioner that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of any of the dependants, or for any other sufficient cause, a determination by the Commissioner as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any dependant is to be dealt with, ought to be varied, the Commissioner may vary that determination in such manner as he thinks just.

(10.) Any weekly payment may be reviewed by the Commissioner at the request either of the Commonwealth or of the employee and on such review may be ended, diminished or increased, subject to the maximum above provided :

Provided that, where the employee was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding two-thirds of the weekly sum which the employee would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding Three pounds.

THE FIRST SCHEDULE—continued.

(11.) Where, in any case other than one of total and permanent incapacity, any weekly payment has been continued for not less than six months, the liability therefor may, at the option of the Commissioner, and with the consent of the employee, but subject to the Regulations, be redeemed by the payment of a lump sum of such an amount as is determined by the Commissioner having regard to the injury and the age and occupation of the employee at the time of the injury and such lump sum may be invested or otherwise applied by the Commissioner for the benefit of the person entitled thereto.

(12.) If an employee receiving a weekly payment ceases to reside in Australia, he shall cease to be entitled to receive any weekly payment, unless a medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the employee shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as are prescribed, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

(13.) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against it.

(14.) Where under this Schedule, a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

Section 10.

THE SECOND SCHEDULE.

Description of Disease.	Description of Process.
Arsenic, phosphorus, lead, mercury or other mineral poisoning	Any employment involving the use or handling of arsenic, phosphorus, lead, mercury or other mineral, or their preparations or compounds
Anthrax	Woolcombing, woolsorting; handling of hides, skins, wool, hair, bristles or carcasses
Zymotic diseases	Persons employed in a hospital or quarantine station, or in an ambulance brigade
Poisoning by benzol or its homologues or their nitro and amido derivatives (dinitro-benzol, anilin and others)	Any process involving the use of benzol or its homologues or their nitro and amido derivatives or their preparations or compounds
Poisoning by carbon bisulphide ..	Any process involving the use of carbon bisulphide or its preparations or compounds
Poisoning by nitrous fumes ..	Any process in which nitrous fumes are evolved
Poisoning by cyanogen compounds	Any process in which cyanogen compounds are used
Poisoning by carbon monoxide ..	Any process in which carbon monoxide is used or evolved
Chrome ulceration	Any process involving the use of chromic acid, or bichromate of ammonium, potassium or sodium or their preparations
Dermatitis produced by dust or caustic or corrosive liquids or ulceration of the mucous membranes of the nose or mouth produced by dust	Any industrial process
Ankylostomiasis	Any employment involving exposure to hookworm infestation

THE SECOND SCHEDULE—continued.

Description of Disease.	Description of Process.
Pneumoconiosis	Quarrying or stone crushing or cutting
Nystagmus	
Subcutaneous cellulitis of the hand (beat hand)	
Subcutaneous cellulitis over the patella (miner's beat knee)	
Acute bursitis over the elbow (miner's beat elbow)	Mining, or quarrying, or stone crushing or cutting
Inflammation of the synovial lining of the wrist joint and tendon sheath	

THE THIRD SCHEDULE.

Section 12.

COMPENSATION FOR SPECIFIED INJURIES.

Nature of Injury.	Amount Payable.
	£ s. d.
Loss of both eyes	750 0 0
Loss of both hands	
Loss of both feet	
Loss of a hand and a foot	
Total and incurable loss of mental powers, involving inability to work	
Total and incurable paralysis of limbs or mental powers	
Loss of either arm, or of the greater part thereof	675 0 0
Loss of lower part of either arm, either hand, or five fingers of either hand	600 0 0
Loss of leg	600 0 0
Loss of the lower part of a leg	562 10 0
Loss of a foot	525 0 0
Loss of one eye, with serious diminution of the sight of the other	675 0 0
Loss of sight of one eye*	375 0 0
Loss of hearing	600 0 0
Complete deafness of one ear	200 0 0
Loss of a thumb	225 0 0
Loss of a forefinger	150 0 0
Loss of part of a thumb	112 10 0
Loss of little finger, middle finger or ring finger	112 10 0
Loss of a toe or the joint of a finger	90 0 0
Loss of a joint of a toe	75 0 0

For the partial loss of the sight of one eye, there shall be payable such percentage of the amount that would be payable for the total loss of the sight thereof as is equal to the percentage of the diminution of sight.

For the purposes of this Schedule, the loss of a specified part of the body shall be deemed to include—

- (a) the loss of the use of that part; and
- (b) the loss of the efficient use of that part in and for the purposes of his employment:

Provided that in that case a percentage of the prescribed amount payable, equal to the percentage of the diminution of the full efficient use as aforesaid, may be awarded in lieu of the full amount.