

EXPLANATORY STATEMENT

Safety, Rehabilitation and Compensation Act 1988

Issued by the Minister for Employment

Safety, Rehabilitation and Compensation (Defence-related Claims) (Specified Diseases and Employment) Instrument 2017

The *Safety, Rehabilitation and Compensation Act 1988* ('SRC Act') provides rehabilitation support for employees of the Commonwealth and licensed corporations, and members of the Australian Defence Force with certain defence service prior to 1 July 2004 ('employees'). The SRC Act also provides workers' compensation for those employees and their dependants.

Subject to the SRC Act, liability to provide rehabilitation and make certain compensation payments arises in respect of an 'injury' suffered by an employee. The term 'injury' is relevantly defined to include a 'disease' suffered by an employee (paragraph 5A(1)(a)), unless the 'disease' is excluded from the definition by operation of subsection 5A(1) (concerning reasonable administrative action) or subsection 7(7) (concerning wilful and false representation).

For a 'disease' to be suffered by an employee for the purposes of paragraph 5A(1)(a), the requirements of subsection 7(1), (2), (3) or (8), or subsection 5B(1), must be satisfied.

This explanatory statement concerns the operation of subsection 7(1) and the legislative instrument made under paragraph (b) of that subsection.

Purpose and effect of subsection 7(1) of the SRC Act

The purpose of subsection 7(1) is to permit the Minister to specify, in a legislative instrument, the circumstances in which employment is deemed to have contributed, to a significant degree, to the contraction of a disease suffered by an employee.

Consistent with this purpose, since the commencement of the SRC Act in 1988, the Minister has specified what are commonly referred to as occupational diseases. An occupational disease is a disease associated with a particular kind of employment because the employment involves a particular risk.

Subsection 7(1) provides:

(1) Where:

- (a) an employee has suffered, or is suffering, from a disease or the death of an employee results from a disease;
- (b) the disease is of a kind specified by the Minister, by legislative instrument, as a disease related to employment of a kind specified in the instrument; and
- (c) the employee was, at any time before symptoms of the disease first became apparent, engaged by the Commonwealth or a licensed corporation in employment of that kind;

the employment in which the employee was so engaged shall, for the purposes of this Act, be taken to have contributed, to a significant degree, to the contraction of the disease, unless the contrary is established.

Note subsection 7(1) is intended to be broadly applied and is not limited to the contraction of a contagious or infectious disease. Note also the term disease used in subsection 7(1) has its ordinary meaning. However, 'aggravation' (which is defined in subsection 4(1) to include acceleration or recurrence) of a disease is not covered by subsection 7(1).

The effect of subsection 7(1) is to reverse the onus of proof in relation to a claim for compensation once it is established that:

- an employee suffered or suffers from a disease of a specified kind; and
- the employee engaged in employment of a specified kind at any time before symptoms of the disease first became apparent.

Once these facts are established, a claimant is not required to further establish that, on the balance of probabilities, the employee's employment contributed to the contraction of the disease.

Instead, the relevant authority for the claim (that is, Comcare, a licensee or the Military Rehabilitation and Compensation Commission, as the case may be) may determine that the employee has suffered, or is suffering, from a 'disease' for the purposes of paragraph 5A(1)(a). The relevant authority is required to make such a determination unless it establishes that, on the balance of probabilities, the employee's employment did not contribute, to a significant degree, to the contraction of the disease.

Safety, Rehabilitation and Compensation (Defence-related Claims) (Specified Diseases and Employment) Instrument 2017

The Safety, Rehabilitation and Compensation (Defence-related Claims) (Specified Diseases and Employment) Instrument 2017 ('Instrument') is made under paragraph 7(1)(b) of the SRC Act.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Instrument commences on the earlier of the day after it is registered on the Federal Register of Legislation or 1 October 2017. Subsection 12(3) of the *Legislation Act 2003* permits a legislative instrument to provide that a provision of the instrument commences before the day the instrument is registered. Pursuant to section 12(2) of the *Legislation Act 2003*, if the Instrument commences before it is registered on the Federal Register of Legislation, a provision of the Instrument does not apply to a person (other than the Commonwealth or an authority of the Commonwealth) if the provision commences before the day the instrument is registered, to the extent that as a result:

- the person's rights as at that day would be affected so as to disadvantage the person; or
- liabilities would be imposed on the person in respect of anything done or omitted to be done before that day.

This instrument applies in relation to a disease that an employee sustains on or after the day this instrument commences.

Repeal of the Safety, Rehabilitation and Compensation (*Specified Diseases*) Notice 2007 (1)

The Safety, Rehabilitation and Compensation (*Specified Diseases*) Notice 2007 (1) (F2007L01983) commenced on 1 July 2007 and will sunset (that is, it will be automatically repealed) on 1 October 2017 in accordance with subsection 50(1) of the *Legislation Act 2003*.

The Instrument will commence on the earlier of the day after it is registered on the Federal Register of Legislation or 1 October 2017. Therefore, the Safety, Rehabilitation and Compensation (*Specified Diseases*) Notice 2007 (1) will be repealed on commencement of the Instrument to avoid there being two legislative instruments made under paragraph 7(1)(b) of the SRC Act operating concurrently.

Consultation

Consultation was undertaken in relation to the Instrument as required under section 17 of the *Legislation Act 2003*.

The Department of Employment consulted directly with Dr Tim Driscoll on a number of occasions between May 2016 and September 2017. Dr Driscoll is an independent consultant in epidemiology, occupational health and public health, a specialist in occupational medicine and public health medicine, and a Fellow of the Australasian Faculties of Occupational and Environmental Medicine and Public Health Medicine.

Dr Driscoll was commissioned by Safe Work Australia to review the latest scientific evidence on the causal link between diseases and occupational exposures for use by Australian workers' compensation jurisdictions in relation to deemed diseases. Dr Driscoll reported the outcome of this review in *Deemed Diseases in Australia* in August 2015 ('2015 Report'). This report was peer reviewed by Professor Malcolm Sim, a physician and epidemiologist, and director of the Monash Centre for Occupational and Environmental Health at Monash University.

Information contained in the 2015 Report was used as the basis for developing the Instrument. Particular regard was had to chapter 5 (evidence used to develop a list of deemed diseases), chapter 6 (a recommended Australian-specific list of deemed diseases) and chapter 7 (recommended guidance material). This report is free to view and download from the Safe Work Australia website: www.safeworkaustralia.gov.au/.

Dr Driscoll was commissioned by the Department of Employment to provide a supplementary report, *Deemed Diseases approach – information to support the update of the Comcare Scheme's current deemed diseases legislative instrument* in August 2017 ('2017 Report'). Information contained in this report, particularly chapter 6 (duration of exposure and latency), was also used to develop the Instrument. This report is free to view and download from the Department of Employment website: www.employment.gov.au/.

The Department of Employment also consulted with Comcare, the Department of Veterans' Affairs, employers and employee representative groups.

During consultation, stakeholders indicated that the Safety, Rehabilitation and Compensation (*Specified Diseases*) Notice 2007 (1) was difficult to apply. This was due primarily to the way in which diseases were described (for example, '*Diseases caused by manganese or its toxic compounds*'). To address this perceived difficulty, the Instrument describes diseases in a way that makes them easier to identify (for example, '*Parkinson's disease*').

Relevant guidance material

As with previous instruments made under subsection 7(1) of the SRC Act, it is intended that only occupational diseases associated with particular kinds of employment should be specified in the Instrument. Schedule 1 of the Instrument should therefore be construed consistently with that intent.

Given that information contained in the 2015 Report and the 2017 Report was used in developing the Instrument, it is expected that relevant authorities will consult those reports when applying Schedule 1 to the Instrument.

It is also expected that relevant authorities will have regard to those reports when investigating whether the contrary is established for the purposes of subsection 7(1) of the SRC Act.

For example, a relevant authority may consider the information relevant to a claimed disease, particularly that contained in the 2017 Report, concerning any minimum exposure and minimum latency period (that is, the time between first exposure to the relevant employment-related risk and the clinical onset of the disease) for that disease.

Employment involving work or a work activity

Most items in Schedule 1 to the Instrument require employment involving work with a specified person, thing or agent. Two items in Schedule 1 (Item 39 and Item 40) require work and contact with a specified agent. One item in Schedule 1 (Item 43) requires employment involving a work activity that involves prolonged or recurrent external friction or pressure.

To satisfy the requirements of an item that specifies:

- ‘*Employment ... involving work with: [a specified person, thing or agent]*’, work with the specified person, thing or agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that person, thing or agent in the course of that employment; and
- ‘*Employment ... involving work and contact with: [a specified agent]*’, work and contact with that agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with, and had contact with, that agent in the course of that employment; and
- ‘*Employment ... involving a work activity [that involves prolonged or recurrent external friction or pressure]*’, that work activity must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have performed that work activity in the course of that employment.

Minimum period of employment

The 2017 Report contains information concerning minimum exposure, including minimum exposure periods. The rationale for proposing a minimum exposure period for a particular disease is described as follows (p 19):

In the absence of definitive information on required cumulative exposure and the likely absence of useful workplace exposure data to establish the cumulative exposure of an individual worker, the appropriate approach appears to be to recommend a minimum exposure time. This assumes that typical workers with exposure to a particular hazardous substance have similar levels of exposure, which means that if they are exposed for a similar length of time they will have a similar cumulative exposure and thus a similar risk of developing the disease related to the exposure. This is the rationale for proposing a minimum exposure period rather than proposing a minimum cumulative exposure. [...]

Most of the items in Schedule 1 to the Instrument specify a minimum period of employment. These are based on the minimum exposure periods contained in the 2017 Report.

To satisfy the requirements of an item that specifies a minimum employment period:

- the employee must have engaged in one or more periods of employment of a kind specified for that item; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than the minimum employment period for that item.

Any period of employment in respect of which a relevant authority would not be liable to pay compensation under the SRC Act should not be counted by that relevant authority.

The employee need not have worked with the person, thing or agent, or undertaken the activity, specified for a particular item, every working day. However, each disease specified in an item in Schedule 1 is associated with a particular kind of employment, and the minimum exposure period for that disease (and therefore the minimum employment period specified for that disease) is based on the typical work profile for that kind of employment.

It follows that if an employee's employment did not involve the work or work activity that was typical for the specified kind of employment, the employment-related risk may have been insufficient even if the employee engaged in the specified kind of employment for the minimum employment period.

In such a case, the relevant authority may still determine that the employee has suffered, or is suffering, from a 'disease' for the purposes of paragraph 5A(1)(a) of the SRC Act unless the relevant authority establishes that, on the balance of probabilities, the employee's employment did not contribute, to a significant degree, to the contraction of the disease.

Schedule 1—Specification

For the purposes of paragraph 7(1)(b) of the SRC Act, a disease of a kind specified in an item in Schedule 1 to the Instrument is a disease related to employment of a kind specified in that item.

Infectious diseases

As provided in the 2017 Report, no minimum employment period is specified for infectious diseases in Schedule 1 (that is, Items 1 to 9).

Item 1 – Anthrax

Anthrax is a very rare infective illness that usually causes open sores on the skin (although involvement of the lung is commonly fatal) and typically arises from contact with the hide of rural animals (2015 Report, p 49). The risk of contracting anthrax arises from exposure to *Bacillus anthracis* (p 49).

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things: animals, animal carcasses or animal parts.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item, work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment.

Exposure to *Bacillus anthracis* other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations: animal handler, pelt handler, abattoir worker or meat inspector.

Item 2 – Brucellosis

Brucellosis is a generalised infective illness that usually arises from contact with reproductive tract tissues of infected cattle (2015 Report, p 46). The risk of contracting brucellosis arises from exposure to *Brucella sp.* (p 46).

During consultation in relation to the Instrument, Dr Driscoll clarified that the appropriate wording for this item is employment involving work with animals, animal carcasses, animal parts or animal waste.

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things: animals, animal carcasses, animal parts or animal waste.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item, work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment.

Exposure to *Brucella sp.* other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations: veterinarian, farmer, farm worker, abattoir worker or laboratory worker.

Item 3 – Hepatitis A

Hepatitis A is a viral infection that affects the liver and is spread between people from hand to mouth (2015 Report, p 47). The risk of contracting hepatitis A arises from exposure to hepatitis A virus (p 47).

For the purposes of this item, the employment-related risk arises from work with the following specified thing: human waste (including whilst wearing protective clothing or using protective equipment).

This item requires employment involving work with a specified thing. To satisfy the requirements of this item, work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment.

Exposure to the hepatitis A virus other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations: child care worker, carer of intellectually disabled persons, rural community worker, remote community worker, sewage worker or plumber.

Item 4 – Hepatitis B or Hepatitis C

Hepatitis B and hepatitis C are viral infections that affect the liver and are spread between people through contact with body fluids (2015 Report, p 47). The risk of contracting hepatitis B and hepatitis C arises from exposure to the hepatitis B virus and the hepatitis C virus, respectively (p 47).

For the purposes of this item, the employment-related risk arises from work with the following specified thing: human body fluids (including whilst wearing protective clothing or using protective equipment).

This item requires employment involving work with a specified thing. To satisfy the requirements of this item, work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment.

Exposure to the hepatitis B virus or the hepatitis C virus other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations: healthcare worker, embalmer, clinical laboratory staff, long-term correctional facility worker, police, member of the Defence Force, emergency services worker or tattooist.

Item 5 – Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS)

HIV/AIDS is an immunodeficiency illness due to infection with the human immunodeficiency virus, and there may be no symptoms for much of the time the person is HIV positive (2015 Report, p 48).

During consultation in relation to the Instrument, Dr Driscoll clarified that the relevant employment-related risk of contracting HIV/AIDS is limited to the transmission of the human immunodeficiency virus to a healthcare worker or a laboratory worker, in a healthcare services setting, through either a needlestick injury or a sharps injury.

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things in the following specified settings: needles in a healthcare services setting or sharps in a healthcare services setting.

This item requires employment involving work with a specified thing in a specified setting. To satisfy the requirements of this item, work with the specified thing in the specified setting must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in that setting in the course of that employment.

Exposure to the human immunodeficiency virus other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Item 6 – Leptospirosis

Leptospirosis is a generalised infective illness that usually arises from contact with urine of infected animals, typically in a rural setting (2015 Report, p 48, as clarified by Dr Driscoll during consultation). The risk of contracting leptospirosis arises from exposure to *Leptospira sp.* (p 48).

During consultation in relation to the Instrument, Dr Driscoll clarified that the appropriate wording for this item is employment involving work with animals, animal carcasses, animal parts or animal waste.

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things: animals, animal carcasses, animal parts or animal waste.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item, work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment.

Exposure to *Leptospira sp.* other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations: farmer, farm worker, abattoir worker, forestry worker, hunter, veterinarian, livestock transport operator or plumber.

Item 7 – Orf

Orf is a rare infective illness that usually causes pustules on the skin and typically arises from contact with infected sheep (2015 Report, p 49). The risk of contracting orf arises from exposure to the parapox virus (p 49).

During consultation in relation to the Instrument, Dr Driscoll clarified that the relevant employment-related risk arises from work with goats and goat carcasses in addition to sheep and sheep carcasses.

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things: goats, goat carcasses, sheep or sheep carcasses.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item, work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment.

Exposure to the parapox virus other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations: sheep farmer, sheep farm worker, goat farmer, goat farm worker, abattoir worker or meat inspector.

Item 8 – Q-fever

Q-fever is a generalised infective illness that usually arises from contact with infected animals or animal parts, usually in a rural setting (2015 Report, p 48). The risk of contracting Q-fever arises from exposure to *Coxiella burnetii* (p 48).

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things: animals, animal carcasses or animal parts.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item, work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment.

Exposure to *Coxiella burnetii* other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations: abattoir worker, stock worker, stock transporter, shearer, hide processor, farmer or veterinarian.

Item 9 – Tuberculosis

Tuberculosis is an infection that usually affects the lungs and can be spread between persons or from animals to persons (2015 Report, p 49). The risk of contracting tuberculosis arises from exposure to *Mycobacterium tuberculosis* (p 49).

During consultation in relation to the Instrument, Dr Driscoll clarified that the relevant risk factor is not contact with persons or animals where the prevalence of tuberculosis is likely to be significantly higher than in the general community. Instead, the relevant risk factor is work with (rather than merely contact with) persons dead or alive in a healthcare services or mortuary setting, or work with (rather than merely contact with) animals dead or alive in a veterinarian or farming setting.

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things or persons in the following specified settings: animals in a farming or veterinarian setting, animal carcasses in a farming or veterinarian setting, human corpses in a healthcare services or mortuary setting, or persons (individuals) in a healthcare services setting.

This item requires employment involving work with a specified thing or person in a specified setting. To satisfy the requirements of this item, work with the specified thing or person in the specified setting must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing or person in that setting in the course of that employment.

Exposure to *Mycobacterium tuberculosis* other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations: healthcare worker, clinical laboratory worker, funeral parlour staff, farmer or veterinarian.

Malignant diseases

For the purposes of Items 10 to 28 in Schedule 1, only primary malignancies of specific parts of the body or specific bodily systems are specified. No metastases from primary malignancies elsewhere in the body are included in the Instrument.

Item 10 – Primary malignant disease of the salivary gland

The relevant risk of developing primary malignant disease of the salivary gland (salivary gland cancer) arises from exposure to ionising radiation (2015 Report, p 50).

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things: equipment that produces ionising radiation, or substances (whether natural or artificial, or in the form of a solid, liquid, gas or vapour) that emit ionising radiation.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item:

- work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Exposure to ionising radiation other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item (for example, employment involving exposure to solar radiation or cosmic radiation).

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations, which involve possible exposure to x-rays on a regular basis: radiographer, radiologist, radiotherapist, dentist or customs officer.

Item 11 – Primary malignant disease of the nasopharynx

The relevant risk of developing primary malignant disease of the nasopharynx (nasopharyngeal cancer) arises from:

- respiratory exposure to formaldehyde (2015 Report, p 50) – for the purposes of this item, this is a specified agent and an employment-related risk arises from work with this agent; or
- respiratory exposure to wood dust (p 50) – for the purposes of this item, wood is a specified thing and an employment-related risk arises from work with wood.

This item requires employment involving work with a specified agent or thing. To satisfy the requirements of item:

- work with the specified agent or thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent or thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Respiratory exposure to formaldehyde or wood dust other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment involving respiratory exposure to formaldehyde required for this item may arise include employment in one of the following occupations: embalmer, forensic mortuary worker, hospital mortuary worker or pathology laboratory worker.

Examples of where the kind of employment involving respiratory exposure to wood dust required for this item may arise include employment in one of the following occupations: pulp mill worker, paper mill worker, sawmill worker, wood veneer plant worker, plywood plant worker, woodchip operations worker, joiner, wooden furniture maker, carpenter, roofer, floorer, maintenance worker, tree-lopper or chainsaw operator.

Item 12 – Primary malignant disease of the oesophagus

The relevant risk of developing primary malignant disease of the oesophagus (oesophageal cancer) arises from exposure to ionising radiation (2015 Report, p 51).

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things: equipment that produces ionising radiation, or substances (whether natural or artificial, or in the form of a solid, liquid, gas or vapour) that emit ionising radiation.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item:

- work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Exposure to ionising radiation other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item (for example, employment involving exposure to solar radiation or cosmic radiation).

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations, which involve possible exposure to x-rays on a regular basis: radiographer, radiologist, radiotherapist, dentist or customs officer.

Item 13 – Primary malignant disease of the stomach

The relevant risk of developing primary malignant disease of the stomach (stomach cancer) arises from exposure to ionising radiation (2015 Report, p 51).

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things: equipment that produces ionising radiation, or substances (whether natural or artificial, or in the form of a solid, liquid, gas or vapour) that emit ionising radiation.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item:

- work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Exposure to ionising radiation other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item (for example, employment involving exposure to solar radiation or cosmic radiation).

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations, which involve possible exposure to x-rays on a regular basis: radiographer, radiologist, radiotherapist, dentist or customs officer.

Item 14 – Primary malignant disease of the colon or rectum

The relevant risk of developing primary malignant disease of the colon or rectum (colo-rectal cancer) is exposure to ionising radiation (2015 Report, p 52).

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things: equipment that produces ionising radiation, or substances (whether natural or artificial, or in the form of a solid, liquid, gas or vapour) that emit ionising radiation.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item:

- work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Exposure to ionising radiation other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item (for example, employment involving exposure to solar radiation or cosmic radiation).

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations, which involve possible exposure to x-rays on a regular basis: radiographer, radiologist, radiotherapist, dentist or customs officer.

Item 15 – Primary malignant disease of the liver

The relevant risk of developing primary malignant disease of the liver (liver cancer) arises from exposure to vinyl chloride monomer (2015 Report, p 52). For the purposes of this item, this is the specified agent and the employment-related risk arises from work with this agent.

This item requires employment involving work with a specified agent. To satisfy the requirements of this item:

- work with the specified agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Exposure to vinyl chloride monomer other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Item 16 – Primary malignant disease of the nasal cavity or para-nasal sinuses

The relevant risk of developing primary malignant disease of the nasal cavity or para-nasal sinuses (cancer of the nasal cavity or para-nasal sinuses) arises from:

- exposure to ionising radiation (2015 Report, p 53) – for the purposes of this item, an employment-related risk arises from work with one or more of the following specified things: equipment that produces ionising radiation, or substances (whether natural or artificial, or in the form of a solid, liquid, gas or vapour) that emit ionising radiation; or
- respiratory exposure to nickel (p 53) – for the purposes of this item, this is a specified agent and an employment-related risk arises from work with this agent; or
- respiratory exposure to leather dust or wood dust (p 53) – for the purposes of this item, leather and wood are specified things and an employment-related risk arises from work with leather or wood.

This item requires employment involving work with a specified thing or agent. To satisfy the requirements of this item:

- work with the specified thing or agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing or agent in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Exposure to ionising radiation other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item (for example, employment involving exposure to solar radiation or cosmic radiation). Respiratory exposure to nickel, leather dust or wood dust other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment involving respiratory exposure to wood dust required for this item may arise include employment in one of the following occupations: pulp mill worker, paper mill worker, sawmill worker, wood veneer plant worker, plywood plant worker, woodchip operations worker, joiner, wooden furniture maker, carpenter, roofer, floorer, maintenance worker, tree-lopper, or chainsaw operator.

Item 17 – Primary malignant disease of the larynx

The relevant risk of developing primary malignant disease of the larynx (laryngeal cancer) arises from:

- respiratory exposure to asbestos (all forms) (2015 Report, pp 39, 54) – for the purposes of this item, asbestos is a specified agent and asbestos-containing material is a specified thing, and an employment-related risk arises from work with this agent or thing;
- respiratory exposure to acid mist (strong inorganic) (p 54) – for the purposes of this item, this is a specified agent and an employment-related risk arises from work with this agent.

This item requires employment involving work with a specified agent or thing. To satisfy the requirements of this item:

- work with the specified agent or thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent or thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Respiratory exposure to asbestos or acid mist (strong inorganic) other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment involving respiratory exposure to asbestos required for this item may arise include employment in one of the following occupations: miner, truck driver or dock worker (prior to 31 December 2003, being the date on which the use of asbestos was banned in Australia), or carpenter, boilermaker, plumber or demolition worker (at any time).

Item 18 – Primary malignant disease of the lung caused by asbestos

The relevant risk of developing primary malignant disease of the lung (carcinoma of the lung) arises from respiratory exposure to asbestos (all forms) (2015 Report, pp 39, 56). For the purposes of this item, asbestos is a specified agent and asbestos-containing material is a specified thing, and an employment-related risk arises from work with this agent or thing.

Only primary malignant disease of the lung caused by asbestos is specified for this item.

This item requires employment involving work with a specified agent or thing. To satisfy the requirements of this item:

- work with the specified agent or thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent or thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Respiratory exposure to asbestos other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment involving respiratory exposure to asbestos required for this item may arise include employment in one of the following occupations: miner, truck driver or dock worker (prior to 31 December 2003, being the date on which the use of asbestos was banned in Australia), or carpenter, boilermaker, plumber or demolition worker (at any time).

Item 19 – Primary malignant disease of the bone

The relevant risk of developing primary malignant disease of the bone (bone cancer) arises from exposure to ionising radiation (2015 Report, p 56).

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things: equipment that produces ionising radiation, or substances (whether natural or artificial, or in the form of a solid, liquid, gas or vapour) that emit ionising radiation.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item:

- work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Exposure to ionising radiation other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item (for example, employment involving exposure to solar radiation or cosmic radiation).

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations, which involve possible exposure to x-rays on a regular basis: radiographer, radiologist, radiotherapist, dentist or customs officer.

Item 20 – Primary malignant disease of the mesothelium

The relevant risk of developing primary malignant disease of the mesothelium (malignant mesothelioma) arises from respiratory exposure to asbestos (all forms) (2015 Report, pp 39, 58). For

the purposes of this item, asbestos is a specified agent and asbestos-containing material is a specified thing, and an employment-related risk arises from work with this agent or thing.

This item requires employment involving work with a specified agent or thing. To satisfy the requirements of this item:

- work with the specified agent or thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent or thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than one year.

Respiratory exposure to asbestos other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment involving respiratory exposure to asbestos required for this item may arise include employment in one of the following occupations: miner, truck driver or dock worker (prior to 31 December 2003, being the date on which the use of asbestos was banned in Australia), or carpenter, boilermaker, plumber or demolition worker (at any time).

Item 21 – Primary malignant disease of the breast

The relevant risk of developing primary malignant disease of the breast (breast cancer) arises from exposure to ionising radiation (2015 Report, p 58).

During consultation in relation to the Instrument, Dr Driscoll clarified that the relevant risk is not limited to females. Accordingly, this item is not limited to female breast cancer.

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things: equipment that produces ionising radiation, or substances (whether natural or artificial, or in the form of a solid, liquid, gas or vapour) that emit ionising radiation.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item:

- work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Exposure to ionising radiation other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item (for example, employment involving exposure to solar radiation or cosmic radiation).

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations, which involve possible exposure to x-rays on a regular basis: radiographer, radiologist, radiotherapist, dentist or customs officer.

Item 22 – Primary malignant disease of the ovary

The relevant risk of developing primary malignant disease of the ovary (ovarian cancer) arises from respiratory exposure to asbestos (all forms) (2015 Report, pp 39, 59). For the purposes of this item, asbestos is a specified agent and asbestos-containing material is a specified thing, and an employment-related risk arises from work with this agent or thing.

This item requires employment involving work with a specified agent or thing. To satisfy the requirements of this item:

- work with the specified agent or thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent or thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Respiratory exposure to asbestos other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment involving respiratory exposure to asbestos required for this item may arise include employment in one of the following occupations: miner, truck driver or dock worker (prior to 31 December 2003, being the date on which the use of asbestos was banned in Australia), or carpenter, boilermaker, plumber or demolition worker (at any time).

Items 23 – Primary malignant disease of the kidney

The relevant risk of developing primary malignant disease of the kidney (renal cancer or cancer of the kidney) arises from:

- exposure to ionising radiation (2015 Report, p 59) – for the purposes of this item, an employment-related risk arises from work with one or more of the following specified things: equipment that produces ionising radiation, or substances (whether natural or artificial, or in the form of a solid, liquid, gas or vapour) that emit ionising radiation; or
- exposure to trichloroethylene (p 59) – for the purposes of this item, this is a specified agent and an employment-related risk arises from work with this agent.

This item requires employment involving work with a specified thing or agent. To satisfy the requirements of this item:

- work with the specified thing or agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing or agent in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Exposure to ionising radiation other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item (for example, employment involving exposure to solar radiation or cosmic radiation). Exposure to trichloroethylene other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Items 24 – Primary malignant disease of urothelial tissue lining the urinary tract

The relevant risk of developing primary malignant disease of urothelial tissue lining the urinary tract (bladder cancer) arises from:

- exposure to ionising radiation (2015 Report, p 60) – for the purposes of this item, an employment-related risk arises from work with one or more of the following specified things: equipment that produces ionising radiation, or substances (whether natural or artificial, or in the form of a solid, liquid, gas or vapour) that emit ionising radiation; or
- exposure to 2-naphthylamine, benzidine, cyclophosphamide or ortho-toluidine (p 60) – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or

- exposure to polycyclic aromatic hydrocarbons during aluminium production (p 60) – for the purposes of this item, polycyclic aromatic hydrocarbons is a specified agent and aluminium production is a specified process, and an employment-related risk arises from work with this agent during this process.

This item requires employment involving work with a specified thing or agent, or work with a specified agent during a specified process. To satisfy the requirements of this item:

- work with the specified thing or agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing or agent in the course of that employment; or
- in the case of polycyclic aromatic hydrocarbons: work with the specified agent during the specified process must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent during that process in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Exposure to ionising radiation other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item (for example, employment involving exposure to solar radiation or cosmic radiation). Exposure to 2-naphthylamine, benzidine, cyclophosphamide, ortho-toluidine or polycyclic aromatic hydrocarbons other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment involving exposure to cyclophosphamide required for this item may arise include employment in one of the following occupations: oncology nurse or pharmacist.

During consultation in relation to the Instrument, Dr Driscoll clarified that the examples of high risk occupations or industries for exposure to polycyclic aromatic hydrocarbons exposure ('PAHs') for this item (*see* 2015 Report, p 60) should have been limited to exposure during aluminium production.

Item 25 – Primary malignant disease of the brain

The relevant risk of developing primary malignant disease of the brain (brain cancer) arises from exposure to ionising radiation (2015 Report, p 61).

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things: equipment that produces ionising radiation, or substances (whether natural or artificial, or in the form of a solid, liquid, gas or vapour) that emit ionising radiation.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item:

- work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Exposure to ionising radiation other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item (for example, employment involving exposure to solar radiation or cosmic radiation).

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations, which involve possible exposure to x-rays on a regular basis: radiographer, radiologist, radiotherapist, dentist or customs officer.

Item 26 – Primary malignant disease of the thyroid

The relevant risk of developing primary malignant disease of the thyroid (thyroid cancer) arises from exposure to ionising radiation (2015 Report, p 61).

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things: equipment that produces ionising radiation, or substances (whether natural or artificial, or in the form of a solid, liquid, gas or vapour) that emit ionising radiation.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item:

- work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Exposure to ionising radiation other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item (for example, employment involving exposure to solar radiation or cosmic radiation).

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations, which involve possible exposure to x-rays on a regular basis: radiographer, radiologist, radiotherapist, dentist or customs officer.

Items 27 – Primary leukaemia (excluding chronic lymphatic leukaemia)

Leukaemia is a malignant disease of a subset of white blood cells (2015 Report, p 62).

The relevant risk of developing primary leukaemia, excluding chronic lymphatic leukaemia, arises from:

- exposure to ionising radiation (2015 Report, p 62) – for the purposes of this item, an employment-related risk arises from work with one or more of the following specified things: equipment that produces ionising radiation, or substances (whether natural or artificial, or in the form of a solid, liquid, gas or vapour) that emit ionising radiation; or
- exposure to benzene, butadiene, cyclophosphamide or formaldehyde (p 62) – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents.

This item requires employment involving work with a specified thing or agent. To satisfy the requirements of this item:

- work with the specified thing or agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing or agent in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 2 years.

Exposure to ionising radiation other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item (for example, employment involving exposure to solar

radiation or cosmic radiation). Exposure to benzene, butadiene, cyclophosphamide or formaldehyde other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations, which involve possible exposure to x-rays on a regular basis: radiographer, radiologist, radiotherapist, dentist or customs officer.

Examples of where the kind of employment involving exposure to cyclophosphamide required for this item may arise include employment in one of the following occupations: oncology nurse or pharmacist.

Examples of where the kind of employment involving exposure to formaldehyde required for this item may arise include employment in one of the following occupations: embalmer, forensic mortuary worker, hospital mortuary worker or pathology laboratory worker.

Item 28 – Primary non-Hodgkins lymphoma

Non-Hodgkins lymphoma is a malignant disease of a subset of white blood cells (2015 Report, p 63). The relevant risk of developing primary non-Hodgkins lymphoma arises from exposure to ionising radiation (p 63).

For the purposes of this item, the employment-related risk arises from work with one or more of the following specified things: equipment that produces ionising radiation, or substances (whether natural or artificial, or in the form of a solid, liquid, gas or vapour) that emit ionising radiation.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item:

- work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 2 years.

Exposure to ionising radiation other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item (for example, employment involving exposure to solar radiation or cosmic radiation).

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations, which involve possible exposure to x-rays on a regular basis: radiographer, radiologist, radiotherapist, dentist or customs officer.

Diseases of the nervous system

Item 29 – Parkinson’s disease

Parkinson’s disease is a neurodegenerative disease of the central nervous system associated with tremor, stiff limbs and difficulty moving (2015 Report, p 63).

The relevant risk of developing Parkinson’s disease arises from exposure to manganese (2015 Report, p 63). For the purposes of this item, this is the specified agent and the employment-related risk arises from work with this agent.

This item requires employment involving work with a specified agent. To satisfy the requirements of this item:

- work with the specified agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than one year.

Exposure to manganese other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations: welder or metal worker.

Item 30 – Peripheral neuropathy

Peripheral neuropathy is a group of diseases characterised by temporary or permanent damage to nerves outside the central nervous system (2015 Report, p 64).

The relevant risk of developing peripheral neuropathy arises from exposure to acrylamide, arsenic, carbon disulphide, lead, mercury, n-hexane, organophosphates or trichloroethylene (2015 Report, p 64). For the purposes of this item, these are the specified agents and the employment-related risk arises from work with one or more of these agents.

This item requires employment involving work with a specified agent. To satisfy the requirements of this item:

- work with the specified agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than one year.

Exposure to acrylamide, arsenic, carbon disulphide, lead, mercury, n-hexane, organophosphates or trichloroethylene other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Respiratory diseases

Item 31 – Occupational asthma

Occupational asthma is a reversible narrowing of the small and medium airways in the lung which causes shortness of breath as a result of exposure to one or more workplace agents (2015 Report, p 65). This includes immunologically-mediated occupational asthma and new cases of occupational asthma arising as result of workplace exposure to irritants, and excludes pre-existing asthma worsened due to exposure to workplace irritants (p 40).

During consultation in relation to the Instrument, Dr Driscoll advised that up-to-date and comprehensive information on specific exposures resulting in occupational asthma, relevant to Australian workplaces, is contained in a published paper by Crewe et al., 2016 (Crewe J, Carey R, Glass D, Peters S, Abramson MJ, Benke G, Reid A, Driscoll T, Fritschi L, *A comprehensive list of asthmagens to inform health interventions in the Australian workplace*, Aust N Z J Public Health. 2016 Apr;40(2):170-3. doi: 10.1111/1753-6405.12479).

The relevant risk of developing occupational asthma arises from respiratory exposure to:

- one of the following arthropods: acarion, barn mite, caddisfly, cricket, *Ephestia kuehniella* (Mediterranean flour moth), fowl mite, fruit fly, grain mite, flour mite, lesser mealworm,

- locust, sheep blowfly or silkworm – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
- one of the following acids: dodecanedioic acid, glacial acetic acid, hydrochloric acid, peroxyacetic acid, sulphuric acid or sulphur dioxide – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following acrylates: acrylic acid, cyanoacrylates, methyl methacrylate, polymethyl methacrylate or trimethylolpropane triacrylate/2-hydroxypropyl acrylate – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following aldehydes: formaldehyde, glutaraldehyde, paraformaldehyde or urea formaldehyde – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following amines: aminoethyl ethanolamine, diethanolamine, dimethylethanolamine, ethanolamines, ethylenediamine, monoethanolamine, surfactant-specific amines, triethanolamine, triethylenetetramine, trimethylhexane-1 or 6-diamine/isophorondiamine mixture – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following ammonias: anhydrous ammonia, ammonium hydroxide, ammonia solution 10% or ammonia solution 29% – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following bio-aerosols: *Alternaria*, *Chrysonilia sitophilia*, *Neurospora*, *Penicillium* or cutting oils – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following biological enzymes: *Bacillus subtilis* enzymes, bromelain, egg lysozyme, esperase, flaviastase, fungal amylase, fungal amyloglucosidase, fungal hemicellulose, pancreatin, papain, pepsin or trypsin – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - epoxy or epoxy adhesive – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - ethylene oxide – for the purposes of this item, this is a specified agent and an employment-related risk arises from work with this agent; or
 - one of the following flours: buckwheat flour, rye flour, soya flour or wheat flour – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following flowers: baby's breath, freesia, *Limonium tataricum* or sunflower – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following foods: Brazil ginseng, castor bean, chamomile, cinnamon, *Dioscorea batatas* (Chinese yam), egg protein, fenugreek, garlic dust, green beans, guar, hops, paprika, pectin, rose hips, soybean lecithin, tea, thiamine (vitamin B) or thyme – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following industrial cleaning and sterilising agents: alkyl dimethyl benzyl ammonium chloride, benzyl-C10-16-alkyldimethyl, chlorides, benzyl-C12-16-alkyldimethyl, chlorides, benzyl-C12-18-alkyldimethyl, chlorides, benzyl-C16-18-alkyldimethyl, chlorides, benzyldimethylstearyl ammonium chloride, cetalkonium chloride, chlorhexidine, chlorine, dialkyl methyl benzyl ammonium chloride, dicumyl-peroxide, dodecyl dimethyl ammonium chloride, dimethyl ethyl benzyl ammonium chloride, dodecyl-dimethylbenzylammonium, fluorine, n-alkyl dimethyl benzyl ammonium chloride, persulphate salts, sodium hypochlorite or sodium metabisulfite – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following isocyanates: diisocyanates, hexamethylene diisocyanate prepolymers, isocyanates or toluene diisocyanate prepolymers – for the purposes of this item, these are

- specified agents and an employment-related risk arises from work with one or more of these agents; or
- latex or natural rubber – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following medications: ampicillin, amprolium, cimetidine, codeine, colistin, hydralazine, ipecacuanha, hydrocodone, isonicotinic acid hydrazide, methyldopa, morphine, opiate compounds, oxycodone, papaverine, penicillamine, penicillins, phenylglycine acid chloride, psyllium, salbutamol intermediate, spiramycin, tetracycline, thebaine, tylosin tartrate or vancomycin – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following metals: aluminium, aluminium chloride, aluminium oxide, aluminium compounds, ammonium dichromate, ammonium hexachloroplatinate (IV), chromium, chromium (metal), chromium (hexavalent), chromium (non-hexavalent), cobalt, cobalt compounds, nickel, nickel compounds, platinum, rhodium, soluble halogenated platinum compounds, titanium oxide/dioxide, tributyl tin oxide, tungsten carbide, tungsten carbide/cobalt, vanadium, welding fumes - gas metal arc welding on uncoated mild steel, welding fumes - stainless steel, stainless steel or zinc oxide – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following other reactive chemicals: chlorofluorocarbon refrigerants heated, fluoride, furfuryl alcohol mixed with a catalyst, isolyzer, polyethylene terephthalate/polybutylene terephthal, polyfunctional aziridine, polypropylene heated, polyvinyl chloride heated, polyvinyl chloride non-heated, polyvinyl chloride thermally degraded, radiographic fixative, resin containing furfuryl alcohol, styrene or triglycidyl isocyanurate – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following pesticides: 3-amino-5-mercapto-1;2;4-triazole, acephate, chloramine T, chlorothalonil (bravo, echo), diazinon, dimethoate, fenthion, malathion, nemacur, piperazine, piperazine citrate, piperazine hydrochloride, pyrethrins, pyrfon, safrotin or tetramethrin – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following plants and sensitising agents or irritants derived from plants: almond dust, *Arabidopsis thaliana*, *Chlorella* algae, gum arabic, henna, kapok, linseed oilcake, *Pinellia ternata*, quillaja bark, rice dust, tall oil crude, tall oil - rosin, tobacco leaf, tragacanth, turpentine, *Vicia sativa* (vetch) or weeping fig – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following reactive dyes: Cibachrome Brilliant Scarlet 32, Drimarene Brilliant Blue K-BL, Drimarene Brilliant Yellow K-3GL, Lanazol Yellow 4G, Levafix Brilliant Yellow E36, Methyl Blue, Rifacion Orange HE 2G, Rifafix Yellow 3 RN, Rifazol Black GR or Rifazol Brilliant Orange 3R – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following sensitising agents or irritants derived from animals: bat guano, bovine serum albumin, casein, cat antigens, chicken antigens, cow antigens, frog antigens, guinea pig antigens, lactoserum, mice antigens, pig antigens, rabbit antigens or rat antigens – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
 - one of the following sensitising agents or irritants derived from fish or shellfish: *Anisakis simplex* (herring worm) antigens, clam antigens, crab antigens, cuttlefish antigens, fishmeal, nacre dust, octopus antigens, prawn antigens, red soft coral antigens, salmon antigens, shrimp meal or trout antigens – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or

- one of the following soldering fluxes: colophony soldering flux, alkyl aryl polyether soldering flux or zinc soldering flux – for the purposes of this item, these are specified agents and an employment-related risk arises from work with one or more of these agents; or
- wood dust from one of the following: *Triplochiton scleroxylon* (African maple), *Acacia melanoxylon* (blackwood), *Sequoia sempervirens* (California redwood), *Juglans olanchana* (Central American walnut), *Thuja occidentalis* (eastern white cedar), *Shorea sp.* (mahogany), *Quercus robur* (oak) or *Thuja lpicata* (western red cedar) – for the purposes of this item, these are the specified things and an employment-related risk arises from work with the wood of one of these things.

This item requires employment involving work with a specified agent or thing. To satisfy the requirements of item:

- work with the specified agent or thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent or thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 4 weeks.

Respiratory exposure to a specified agent or wood dust from a specified tree other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Item 32 – Coal workers’ pneumoconiosis

Coal workers’ pneumoconiosis is a fibrotic lung disease (2015 Report, p 65).

The relevant risk of developing coal workers’ pneumoconiosis arises from respiratory exposure to coal (2015 Report, p 65). For the purposes of this item, this is the specified agent and the employment-related risk arises from work with this agent.

This item requires employment involving work with a specified agent. To satisfy the requirements of this item:

- work with the specified agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Respiratory exposure to coal other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

An example of where the kind of employment required for this item may arise is employment in the occupation of coal miner.

Item 33 – Asbestosis

Asbestosis is a fibrotic lung disease caused by respiratory exposure to asbestos (all forms) (2015 Report, pp 27, 39, 65). For the purposes of this item, asbestos is a specified agent and asbestos-containing material is a specified thing, and an employment-related risk arises from work with this agent or thing.

This item requires employment involving work with a specified agent or thing. To satisfy the requirements of this item:

- work with the specified agent or thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent or thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Respiratory exposure to asbestos other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment involving respiratory exposure to asbestos required for this item may arise include employment in one of the following occupations: miner, truck driver or dock worker (prior to 31 December 2003, being the date on which the use of asbestos was banned in Australia), or carpenter, boilermaker, plumber or demolition worker (at any time).

Item 34 – Silicosis

Silicosis is a fibrotic lung disease caused by respiratory exposure to silica (including all materials containing crystalline silica) (2015 Report, pp 27, 65). For the purposes of this item, material containing crystalline silica is a specified thing, and silica is a specified agent, and the employment-related risk arises from work with this thing or agent.

This item requires employment involving work with a specified thing or agent. To satisfy the requirements of this item:

- work with the specified thing or agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing or agent in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Respiratory exposure to silica other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations: excavator, miner, brick cutter, concrete cutter, stone cutter, abrasive blaster or foundry casting worker.

Item 35 – Other pneumoconiosis

The relevant risk of developing other pneumoconiosis (fibrotic lung disease) arises from respiratory exposure to beryllium, tin, iron oxide, barium, aluminium, cobalt or tungsten (2015 Report, pp 40, 65). For the purposes of this item, these are the specified agents and the employment-related risk arises from work with one or more of these agents.

This item requires employment involving work with a specified agent. To satisfy the requirements of this item:

- work with the specified agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 5 years.

Respiratory exposure to a specified agent other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Item 36 – Byssinosis

Byssinosis is an asthma-like condition (reversible narrowing of the small and medium airways in the lung which causes shortness of breath) (2015 Report, p 66).

The relevant risk of developing byssinosis arises from respiratory exposure to cotton dust, flax dust, hemp dust or sisal dust (2015 Report, p 66). For the purposes of this item, unprocessed cotton, unprocessed flax, unprocessed hemp and unprocessed sisal are specified agents and an employment-related risk arises from work with one of these agents.

This item requires employment involving work with a specified agent. To satisfy the requirements of this item:

- work with the specified agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 4 weeks.

Respiratory exposure to cotton dust, flax dust, hemp dust or sisal dust other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Item 37 – Extrinsic allergic alveolitis

Extrinsic allergic alveolitis is a disease of the alveoli (the gas-exchange spaces in the lung) causing shortness of breath (2015 Report, p 66).

The relevant risk of developing extrinsic allergic alveolitis arises from respiratory exposure to mouldy feathers, mouldy grain, mouldy hay or mouldy straw (2015 Report, p 66). For the purposes of this item, feathers, grain, hay and straw are the specified things and the employment-related risk arises from work with one of these things.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item:

- work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 4 weeks.

Respiratory exposure to mouldy feathers, mouldy grain, mouldy hay or mouldy straw other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Hepatic disease

Item 38 – Non-infectious hepatitis

Non-infectious hepatitis is an acute inflammation of the liver due to non-infectious agents (2015 Report, p 66).

The relevant risk of developing non-infectious hepatitis arises from exposure to acrylonitrile, alcohols, amino-derivatives of benzene, antimony, aromatic hydrocarbons, arsenic, benzene, benzoquinone, beryllium, cadmium, carbon disulphide, carbon monoxide, chromium, copper, fluorine, glycols, hexane, hydrogen cyanide, hydrogen sulphide, ketones, lead, manganese, mercury, methylene chloride, mineral acids, nitric acid esters, organochlorine compounds, organophosphate, osmium,

oxides of nitrogen, ozone, phosgene, phosphorus, selenium, styrene, thallium, tin, toluene, toxic halogen derivatives of aliphatic, toxic nitro-derivatives of benzene, vanadium or zinc (2015 Report, pp 40, 70). For the purposes of this item, these are the specified agents and the employment-related risk arises from work with one or more of these agents.

This item requires employment involving work with a specified agent. To satisfy the requirements of this item, work with the specified agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent in the course of that employment.

Exposure to a specified agent other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Skin diseases

Item 39 – Irritant contact dermatitis

Dermatitis is an inflammatory disease of the skin (2015 Report, p 68).

The relevant risk of developing irritant contact dermatitis arises from contact with alcohols, cutting fluids, cleaners, degreasers, disinfectants, liquids (frequent contact), liquids (prolonged contact), petroleum products, soaps or solvents (2015 Report, p 68). For the purposes of this item, these are the specified agents and the employment-related risk arises from work and contact with one or more of these agents.

This item requires employment involving work and contact with a specified agent. To satisfy the requirements of this item:

- work and contact with the specified agent (and in the case of liquids, the contact must be frequent or prolonged) must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with, and had contact with, that agent in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 4 weeks.

Contact with alcohols, cutting fluids, cleaners, degreasers, disinfectants, liquids, petroleum products, soaps or solvents other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations: agricultural worker, beautician, chemical worker, cleaner, cook, caterer, electronics worker, hairdresser, healthcare worker, machine operator, mechanic, metalworker or vehicle assembler.

Item 40 – Allergic contact dermatitis

Dermatitis is an inflammatory disease of the skin (2015 Report, p 68).

The relevant risk of developing allergic contact dermatitis arises from contact with acrylics, chromates, cobalt, cosmetics, epoxy resin, fragrances, latex, nickel, plants, preservatives or resins (2015 Report, p 68).

During consultation in relation to the Instrument, Dr Driscoll provided a more specific list of the agents known to cause allergic contact dermatitis in an occupational setting. The revised list is based on a 2013 article by Hannam and Nixon (Hannam S, Nixon R, *How to treat occupational contact*

dermatitis, Australian Doctor 2013; April:25-33) and a 2005 article by Nixon, Frowen and Moyle (Nixon R, Frowen K, Moyle M, *Occupational dermatoses*, Aust Fam Physician 2005; 34(5):327-333).

The revised list includes: 2,5-diaminotoluene sulfate, 4-phenylenediamine base, ammonium persulfate, cobalt chloride, cocamide diethanolamide, coconut diethanolamide, colophonium/colophony/rosin, diazolidinyl urea, epoxy resin, formaldehyde, fragrance mix I (amylcinnamaldehyde, cinnamic alcohol, cinnamic aldehyde, eugenol, geraniol, hydroxycitronellal, isoeugenol and oakmoss absolute), fragrance mix II (citral, citronellol, coumarin, farnesol, hexyl cinnamic aldehyde and hydroxyisohexyl 3-cyclohexene carboxaldehyde.), glyceryl monothioglycolate, hydroxyethyl methacrylate, mercaptobenzothiazole, methyl chloroisothiazolinone, mixture of methylchloroisothiazolinone and methylisothiazolinone, nickel sulfate, potassium dichromate, quaternium 15, thiuram mix (tetramethylthiuramdisulfide, tetramethylthiuram monosulfide and tetraethylthiuram disulfide). For the purposes of this item, these are the specified agents and the employment-related risk arises from work and contact with one or more of these agents.

In the case of fragrance mix I, fragrance mix II and thiuram mix, the mix and the individual chemical components are each specified agents for the purposes of this item.

This item requires employment involving work and contact with a specified agent. To satisfy the requirements of this item:

- work and contact with the specified agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with, and had contact with, that agent in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 4 weeks.

Contact with a specified agent other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Examples of where the kind of employment required for this item may arise include employment in one of the following occupations: agricultural worker, beautician, chemical worker, cleaner, cook, caterer, electronics worker, hairdresser, healthcare worker, machine operator, mechanic, metalworker or vehicle assembler.

Item 41 – Occupational vitiligo

Vitiligo is a disease where the melanin-producing cells in the skin, mucous membranes and/or eye are damaged, with loss of pigment resulting in white patches on the skin or other affected areas (2015 Report, p 68).

The relevant risk of developing occupational vitiligo arises from exposure to hydroquinone, monobenzyl ether of hydroquinone, monobutyl ether of hydroquinone, para-amyphenol, para-tertiary-butylcatechol or para-tertiary-butylphenol (2015 Report, p 68). For the purposes of this item, these are the specified agents and the employment-related risk arises from work with one or more of these agents.

This item requires employment involving work with a specified agent. To satisfy the requirements of this item:

- work with the specified agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 4 weeks.

Exposure to hydroquinone, monobenzyl ether of hydroquinone, monobutyl ether of hydroquinone, para-amyphenol, para-tertiary-butylcatechol or para-tertiary-butylphenol other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Musculoskeletal diseases

Item 42 – Raynaud’s disease

Raynaud’s disease is characterised by intermittent spasm of the arteries of the hands or feet, causing pain due to decreased blood flow to the affected area (2015 Report, p 69).

The relevant risk of developing Raynaud’s disease arises from exposure to vibration from powered equipment or vibration from powered tools (2015 Report, p 41). For the purposes of this item, powered equipment that produces vibration and powered tools that produce vibration are the specified things and the employment-related risk arises from work with one or more of these things.

This item requires employment involving work with a specified thing. To satisfy the requirements of this item:

- work with the specified thing must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that thing in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 12 weeks.

Exposure to vibration other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Item 43 – Bursitis at the elbow or knee

Bursitis (inflammation of the relevant bursa) causes pain, tenderness and sometimes swelling just above or below the knee or behind the elbow, worse with movement (2015 Report, p 69).

The relevant risk of developing bursitis at the elbow arises from prolonged or recurrent external friction or pressure at or about the elbow, and the relevant risk of developing bursitis at the knee arises from prolonged or recurrent external friction or pressure at or about the knee (2015 Report, p 69, as clarified by Dr Driscoll during consultation).

For the purposes of this item, the employment-related risk arises from a specified work activity that:

- in the case of bursitis at the elbow: involves prolonged or recurrent external friction or pressure at or about the elbow; or
- in the case of bursitis at the knee: involves prolonged or recurrent external friction or pressure at or about the knee.

This item requires employment involving a specified work activity. To satisfy the requirements of this item:

- the specified work activity must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have undertaken that activity in the course of that employment; and
- the period, or the sum total of periods (whether consecutive or not), of such employment, must have been no less than 6 months.

Prolonged or recurrent external friction or pressure at or about the elbow or knee occurring other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Acute diseases

Item 44 – Acute poisoning or toxicity affecting the heart, lungs, liver, kidney, nervous system or blood

The relevant risk of developing acute poisoning or toxicity affecting the heart, lungs, liver, kidney, nervous system or blood includes exposure to acrylonitrile, alcohols, amino-derivatives of benzene, antimony, aromatic hydrocarbons, arsenic, benzene, benzoquinone, beryllium, cadmium, carbon disulphide, carbon monoxide, chromium, copper, fluorine, glycols, hexane, hydrogen cyanide, hydrogen sulphide, ketones, lead, manganese, mercury, methylene chloride, mineral acids, nitric acid esters, organochlorine compounds, organophosphate, osmium, oxides of nitrogen, ozone, phosgene, phosphorus, selenium, styrene, thallium, tin, toluene, toxic halogen derivatives of aliphatic, toxic nitro-derivatives of benzene, vanadium or zinc (2015 Report, p 70). For the purposes of this item, these are the specified agents and the employment-related risk arises from work with one or more of these agents.

This item requires employment involving work with a specified agent. To satisfy the requirements of this item, work with the specified agent must have been an ordinary incident of the kind of employment in which the employee was engaged, and the employee must have worked with that agent in the course of that employment.

Exposure to a specified agent other than in the circumstances described in the preceding paragraph will not satisfy the requirements of this item.

Schedule 2—Occupational asthma

An agent or thing specified in column 2 of an item of the table in Schedule 2 is a specified agent or thing for the purposes of Item 31 (Occupational asthma) of the table in Schedule 1.

Schedule 3—Repeals

The Safety, Rehabilitation and Compensation (*Specified Diseases*) Notice 2007 (1) (F2007L01983) is repealed.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Safety, Rehabilitation and Compensation (Defence-related Claims) (Specified Diseases and Employment) Instrument 2017

This legislative instrument is compatible with the human rights and freedoms recognised or declared by the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

Background – operation of the SRC Act

The *Safety, Rehabilitation and Compensation Act 1988* ('SRC Act') provides rehabilitation support for employees of the Commonwealth and licensed corporations, and members of the Australian Defence Force with certain defence service prior to 1 July 2004 ('employees'). The SRC Act also provides workers' compensation for those employees and their dependants.

Subject to the SRC Act, liability to provide rehabilitation and make certain compensation payments arises in respect of an 'injury' suffered by an employee. The term 'injury' is relevantly defined to include a 'disease' suffered by an employee (paragraph 5A(1)(a)), unless the 'disease' is excluded from the definition by operation of subsection 5A(1) (concerning reasonable administrative action) or subsection 7(7) (concerning wilful and false representation).

The SRC Act contains a number of deeming provisions in accordance with which a disease (in the ordinary sense) will be taken to have been contributed to, to a significant degree, by the employee's employment with the Commonwealth or licensed corporation, unless the contrary is established. Subsection 7(1) is one of these deeming provisions.

Purpose and effect of subsection 7(1) of the SRC Act

The purpose of subsection 7(1) is to permit the Minister to specify, in a legislative instrument, the circumstances in which employment is deemed to have contributed, to a significant degree, to the contraction of a disease suffered by an employee.

Consistent with this purpose, since the commencement of the SRC Act in 1988, the Minister has specified what are commonly referred to as occupational diseases. An occupational disease is a disease associated with a particular kind of employment because the employment involves a particular risk.

The effect of subsection 7(1) is to reverse the onus of proof in relation to a claim for compensation once it is established that:

- an employee suffered or suffers from a disease of a specified kind; and
- the employee engaged in employment of a specified kind at any time before symptoms of the disease first became apparent.

Once these facts are established, a claimant is not required to further establish that, on the balance of probabilities, the employee's employment contributed to the contraction of the disease.

Instead, the relevant authority for the claim (that is, Comcare, a licensee or the Military Rehabilitation and Compensation Commission, as the case may be) may determine that the employee has suffered, or is suffering, from a 'disease' for the purposes of paragraph 5A(1)(a). The relevant authority is required to make such a determination unless it establishes that, on the balance of probabilities, the employee's employment did not contribute, to a significant degree, to the contraction of the disease.

Safety, Rehabilitation and Compensation (Defence-related Claims) (Specified Diseases and Employment) Instrument 2017

Two reports by Dr Tim Driscoll formed the basis of the content of this legislative instrument. Dr Driscoll is an independent consultant in epidemiology, occupational health and public health, a specialist in occupational medicine and public health medicine, and a Fellow of the Australasian Faculties of Occupational and Environmental Medicine and Public Health Medicine.

The first report was commissioned by Safe Work Australia and was peer reviewed by Professor Malcom Sim, a physician and epidemiologist, and director of the Monash Centre for Occupational and Environmental Health at Monash University. The second report was commissioned by the Department of Employment to support the drafting of this legislative instrument.

The Department also consulted directly with Dr Driscoll on a number of occasions between May 2016 and September 2017.

Human rights implications

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* provides for the right of everyone to social security, including social insurance. General Comment 19 by the Committee on Economic, Social and Cultural Rights elaborates on Article 9, stating that the ‘States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work’.¹ Workers’ compensation is analogous to social insurance in that it provides payment of wages and medical costs to employees for injuries occurring as a result of their employment.

This legislative instrument will assist an employee (or his or her dependants) in relation to a claim made in respect of a disease of a kind specified in the instrument, where the employee was engaged by the Commonwealth or a licensed corporation in employment of a kind specified in the instrument before symptoms of the disease first became apparent. It does this by enlivening subsection 7(1) of the SRC Act, which effectively reverses the onus of proof in relation to the claimed disease. This reduces the evidentiary burden on the claimant for the purposes of establishing an entitlement to workers’ compensation and other benefits under the SRC Act.

If an employee does not satisfy the requirements of an item of this legislative instrument (for example, by not meeting the minimum employment period specified for that item), it remains open for the employee (or his or her dependants) to otherwise establish, on the balance of probabilities, that the disease was contributed to, to a significant degree, by the employee’s employment with the Commonwealth or a licensed corporation.

Conclusion

This legislative instrument is compatible with human rights.

Senator the Hon Michaelia Cash

Minister for Employment

¹ Committee on Economic, Social and Cultural Rights, *General Comment 19: The Right to Social Security (art. 9)*, U.N. Doc E/C.12/GC/19 (2008), [17].

Note: The name of this instrument was amended on registration as the instrument as lodged did not have a unique name (see subsection 10(2), *Legislation Rule 2016*).