

Safety, Rehabilitation and Compensation Regulations 2002

2002 No. 56

EXPLANATORY STATEMENT

Statutory Rules 2002 No. 56

Issued by the authority of the Minister for Employment and Workplace Relations

Safety, Rehabilitation and Compensation Act 1988

Safety, Rehabilitation and Compensation Regulations 2002

Section 122 of the *Safety, Rehabilitation and Compensation Act 1988* (the Act) provides that the Governor-General may make Regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed for carrying out or giving effect to the Act.

The purpose of the Regulations is to implement amendments made to the Act in Schedule 2 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001* (the SRCOLA Act) by prescribing a number of matters essentially to streamline the Act's licensing arrangements, to introduce new approval processes for rehabilitation treatment providers and to clarify provisions relating to compensation.

These Regulations repeal the Safety, Rehabilitation and Compensation Regulations 1990 (the 1990 Regulations), but replicate all provisions of those Regulations (except for one redundant provision). This approach was taken as a matter of drafting style, to make the Regulations more readable by avoiding complex renumbering.

The SRCOLA Act received Royal Assent on 1 October 2001. The Regulations implement this Act by prescribing:

- additional categories of health professionals who can provide "medical treatment" as defined in the *Safety, Rehabilitation and Compensation Act 1988* to enable the costs of such treatment to be reimbursed to the claimant without the need for referral by a medical practitioner (Regulation 17);
- an index for determining the appropriate amount of compensation for ex-employees in relation to increases in normal weekly earnings. There are also provisions for the method for calculating the increase in normal weekly earnings (Part 2 of the Regulations);
- the renewal periods for renewal of approval as a rehabilitation program provider, as well as the fees for applications for initial approval and renewal of that approval (Part 3 of the Regulations);
- a "prescribed day" for the annual date by which information must be provided to Comcare for estimating salary and wages to be paid to employees during the next financial year (Regulation 19);
- the form for an application for a licence, as well as the required particulars of the applicant, and other information and documents which must be contained in or accompany licence applications (Part 4 of the Regulations); and
- the consequences of revocation of a licence and suspension of a licence (Part 5 of the Regulations).

A technical amendment has been made to concerning a provision in the repealed 1990 Regulations to delete a duplicated reference to the Commissioner of the Australian Federal Police.

More details of the Regulations are set out in the attachment.

The commencement date of the Regulations is 1 April 2002, except for Regulation 19 which has 1 July 2002 as its commencement date. These commencement dates mirror the relevant commencement dates under the SRCOLA Act

ATTACHMENT

SAFETY, REHABILITATION AND COMPENSATION REGULATIONS 2002

PART 1: PRELIMINARY

Regulation 1 - Name of Regulations

This is a formal provision that provides for the name of the Regulations.

Regulation 2 - Commencement

This Regulation provides a commencement date of 1 April 2002 for the Regulations, except for Regulation 19 which commences on 1 July 2002.

Regulation 3 - *Safety, Rehabilitation and Compensation Regulations 1990 - repeal*

Regulation 3 repeals the *Safety, Rehabilitation and Compensation Regulations 1990* (the 1990 Regulations) as comprised by Statutory Rules SR 1990 No.209, SR 1994 No. 258 and SR 2001 No. 91. The repealed 1990 Regulations are incorporated fully into these Regulations, except for Regulation 4(b) of the 1990 Regulations, which was not included because it contained a duplicated (and therefore redundant) provision relating to the Commissioner of the Australian Federal Police (see Regulation 20).

Regulation 4 - Definitions

This item incorporates the old definition of 'Act' from the repealed 1990 Regulations (defined as the *Safety, Rehabilitation and Compensation Act 1988*) and provides new definitions of 'licensee', 'quarter' and 'suspension period'.

- 'quarter' is defined as a 3 month period beginning 1 January, 1 April, 1 July or 1 October. (This definition is required for Regulations 5 and 6.)
- 'licensee' is defined to include a person who manages claims on behalf of the licensee. (This definition is required for Regulations 13-15.)
- 'suspension period' is defined as the period for which a licence is suspended. (This definition is required for Regulation 13.)

PART 2: COMPENSATION

Regulation 5 - Index - percentage of further increase in normal weekly earnings

Subsection 8(9B) of the Act provides for calculating increases in the normal weekly earnings (NWE) of persons who are no longer employed by the Commonwealth or a licensed corporation by reference to an index that is prescribed for the purposes of the subsection. Regulation 5 prescribes the Wage Cost Index, Australia (Total hourly rates of pay - excluding bonuses/all Australia/all industries/all occupations) published by the Australian Bureau of Statistics as the prescribed index for the purposes of subsection 8(9B) of the Act.

Regulation 6 - Manner of calculation of further increase in normal weekly earnings

Subsection 8(9D) of the Act provides that Regulations may specify the manner of calculating increases for the purpose of subsection 8(9B). This Regulation prescribes a formula for calculating the increase. The formula requires the amount of the NWE that applied immediately before the indexation date (PE) to be deducted from the amount obtained by multiplying PE by

the number obtained by dividing the numerical value of the index prescribed by Regulation 5 for the quarter that ended on the 31 December immediately preceding the indexation date by the numerical value of that index for the quarter that ended on the previous 31 December (F). To ensure that no decrease can occur, the formula provides F cannot have a value of less than 1.000. Thus, if F were 1.012, there would be a 1.2% increase in NWE.

PART 3: APPROVED REHABILITATION PROGRAM PROVIDERS

This Part of the Regulations relates to Item 26 of Schedule 2 to the SRCOLA Act which repealed old section 34 of the Act which provided for approval of rehabilitation program providers. Item 26 commenced on 1 April 2002 and provides a new scheme for these approvals in new sections 34 to 34S. There is a transitional provision (Item 28 of Schedule 2 to the SRCOLA Act) which provides that existing approvals will remain in force until the next renewal date.

Regulation 7 - Renewal date

Regulation 7 relates to section 34 of the Act. This section defines "renewal date" for approval as a rehabilitation program provider by reference to a date to be determined by the Minister for the first renewal date (which is 30 September 2002) and prescribed intervals thereafter. Regulation 7 prescribes 21 months after the first renewal date and thereafter 3 years as the prescribed intervals for purposes of section 34.

Regulation 8 - Processing fee for application for initial approval

Regulation 8 relates to fees to be prescribed for initial approvals of rehabilitation program providers under section 34C of the Act. The prescribed fee is \$300 if the applicant held an approval under section 34 of the Act immediately before the commencement of Item 26 on 1 April 2002, and \$400 in any other case.

Regulation 9 - Processing fee for renewal of approval

Regulation 9 prescribes the fee for renewals of approval (under subsection 34K(2) of the Act) as \$300.

PART 4: APPLICATION FOR GRANT OF A LICENCE

This Part of the Regulations relates to Item 49 of Schedule 2 to the SRCOLA Act which repealed Parts VIIIA and VIIIB of the Act and inserted a new Part VIII of the Act. Item 49 commenced on 1 April 2002 and provides for the Safety, Rehabilitation and Compensation Commission (the Commission) to license Commonwealth authorities to accept liability under the Act, to accept responsibility to manage claims under the Act, or to do both and to license eligible corporations to do both. The Commission is required to act in accordance with directions given by the Minister under section 89D of the Act.

Item 49 inserted new section 102 in the Act, to which the Regulations in this Part relate. Under previous provisions in the Act, the Commission determined the form for an application for a licence and the documents and information which needed to accompany the application. Under new licensing arrangements in Part VIII of the Act, the application for a licence must be in the prescribed form, and should contain particulars of the applicant and other information, and be accompanied by such documents as the Regulations prescribe.

Regulation 10 - Prescribed form

Under paragraph 102(1)(a) of the Act, an application for a licence is required to be in the prescribed form. Regulation 10 provides that Form 1 in Schedule 1 to the Regulations is prescribed for this purpose.

Regulation 11 - Prescribed particulars

Under paragraph 102(1)(b) of the Act, an application for a licence is required to contain such particulars of the eligible applicant as the Regulations prescribe. Regulation 11 prescribes the particulars mentioned in Schedule 2 to the Regulations for this purpose.

Regulation 12 - Prescribed documents and information

Under paragraph 102(1)(c) of the Act, an application for a licence is required to contain information and be accompanied by such documents, as the Regulations provide. Regulation 12 prescribes the information and documents as follows:

- all applications require the information and documents mentioned in Parts 1, 2, 3, 4 and 5 of Schedule 3 to the Regulations;
- for applications for a licence to accept liability only, the information and documents mentioned in Part 6 of Schedule 3;
- for applications for a licence only in relation to some of the applicant's employees, the information mentioned in Part 7 of Schedule 3;
- if the applicant will be responsible for managing claims by employees, the information mentioned in Part 8 of Schedule 3;
- for an application by a Commonwealth authority, and not for a licence to accept liability, a certificate of coverage of its employees from Comcare; and
- for an application by a Commonwealth authority or a former Commonwealth authority, details of its consultation with the portfolio Minister about the applicant's intention to apply for a licence.

PART 5: SUSPENSION AND REVOCATION OF LICENCES

This Part of the Regulations also relates to Part VIII of the Act which was inserted by Item 49 of Schedule 2 to the SRCOLA Act which commenced on 1 April 2002. Item 49 inserted a new section 107A in the Act which provides that Regulations may provide for the consequences of the suspension of a licence under section 106, or the revocation of a licence under sections 106 and 107. The previous provisions of the Act made provision for these matters directly. The consequences of suspension and revocation of a licence in these Regulations largely reflect the matters provided in the previous provisions but are simplified given there is now one generic licence under Part VIII of the Act.

Regulation 13 - Consequences of suspension of licence - Commonwealth authorities

Subregulation 13(1) provides that Regulation 13 prescribes the consequences of the suspension of a licence of a Commonwealth authority under section 106 of the Act. (Section 106 of the Act provides for the Commission to suspend or revoke a licence, if it considers it appropriate after following such preliminary procedures as are specified in the Minister's directions.)

Subregulation 13(2) provides that if the licence authorises the licensee to accept liability under the Act, the suspension of the licence does not affect that liability and that during the suspension period, Comcare may, subject to the Commission's consent and directions, discharge that liability. Paragraph 13(2)(c) requires the licensee to fully reimburse Comcare for any discharge of liability by Comcare.

Subregulation 13(3) provides for the consequences of suspension of licences authorising claims management. Paragraph 13(3)(a) requires Comcare to manage those claims in the name of the licensee, and requires the licensee to provide prescribed information and documentation to Comcare. Paragraph 13(3)(b) requires the licensee to reimburse Comcare for expenses incurred in managing claims under paragraph 13(3)(a). Paragraph 13(3)(c) excludes liability for Comcare for any act or omission in the course of claims management under subregulation 13(3).

Regulation 14 - Consequences of revocation of licence - Commonwealth Authorities

Subregulation 14(1) provides that Regulation 14 prescribes the consequences of the revocation of a licence to a Commonwealth authority under section 106 or 107 of the Act. (Section 106 of the Act provides for the Commission to suspend or revoke a licence, if it considers it appropriate after following such preliminary procedures as are specified in the Minister's directions. Section 107 of the Act provides for revocation of a licence by the Commission at the written request of a licensee.)

Subregulation 14(2) provides that if the licence authorises the licensee to accept liability under the Act, the licensee ceases to be liable under the Act for payments in respect of events occurring on or after the date of revocation. However, the licensee remains liable under the Act for payments relating to events before the date of revocation, although Comcare may, subject to the Commission's consent and directions, discharge that liability. Paragraph 14(2)(d) requires the licensee to fully reimburse Comcare for any such discharge of liability by Comcare.

Subregulation 14(3) provides for the consequences of revocation of licences authorising claims management. Paragraph 14(3)(a) provides that the licensee must not manage any claims from the time of revocation. Paragraphs 14(3)(b) and (c) require Comcare to manage those claims and make provision for the licensee to provide prescribed information and documentation to Comcare.

Subregulation 14(4) deems acts, decisions, notices or communications given, received or made by the licensee in managing a claim to have been done, made, given or received by Comcare.

Subregulation 14(5) deems Comcare to be a party to proceedings in place of the licensee if the licensee had been a party to ongoing proceedings on the date of revocation.

Subregulation 14(6) provides that the Act continues to apply to the licensee and its employees.

Subregulations 14(7) and (8) provide that Comcare is liable under the Act for payments in respect of the licensee's employees occurring on or after the date of revocation and that the licensee is liable to pay premiums in respect of this liability.

Regulation 15 - Consequences of revocation of licence - eligible corporations

Subregulation 15(1) provides that Regulation 15 prescribes the consequences of the revocation of a licence to an eligible corporation under section 106 or 107 of the Act pursuant to section 107A of the Act.

Subregulation 15(2) provides that if the licence authorises the licensee to accept liability under the Act, the licensee ceases to be liable under the Act for payments in respect of events occurring on or after the date of revocation. However, the licensee remains liable under the Act for payments relating to events before the date of revocation.

Subregulation 15(3) makes provision for the consequences of revocation of licences authorising claims management. It provides that the licensee must manage claims in respect of events occurring before revocation, but must not manage any claims from the time of revocation. It

further provides that the licensee remains a party to ongoing proceedings after the date of revocation.

Subregulation 15(4) provides that, except as provided by subregulations (2) and (3), the Act ceases to apply to the licensee and its employees and that the laws of the States and Territories providing for workers' compensation apply to the licensee.

PART 6: MISCELLANEOUS

Regulation 16 - Entities and principal officers

Regulation 16 replicates repealed Regulation 2A of the 1990 Regulations and provides that Schedule 4 prescribes entities and principal officers for the purposes of the relevant definitions in subsection 4(1) of the Act.

Regulation 17 - Forms of medical treatment

Regulation 17 prescribes additional categories of health professionals who can provide "medical treatment" as defined in subsection 4(1) of the Act. This enables the costs of such treatment to be reimbursed to claimants without the need for referral by a medical practitioner. The Regulation prescribes occupational therapists, optometrists, podiatrists, psychologists and speech therapists who are registered under a relevant law of a State or Territory, or, if there is no such law, who are members of relevant professional associations.

Regulation 18 - Fee for approved guide

Regulation 18 prescribes a fee of \$10 for the purposes of subsection 28(8) of the Act. Subsection 28(8) allows a fee to be prescribed for the cost of copies of the "Guide to the Assessment of the Degree of Permanent Impairment" which must be made available by Comcare.

Regulation 19 - Prescribed day for providing information to Comcare

Regulation 19 defines the "prescribed day" in subsection 97F(3) of the Act as 31 March for 2003 and each subsequent year. Under Regulation 2, Regulation 19 has a commencement date of 1 July 2002, reflecting the commencement date provided under the SRCOLA Act for subsection 97F. Subsection 97F requires information to be provided to Comcare by the prescribed date estimating salary and wages to be paid to employees during the next financial year.

Regulation 20 - Appropriate officer - paragraph 114A(2)(b) of the Act

Regulation 20 replicates repealed paragraph 4(a) of the 1990 Regulations which prescribes the Chief of the Defence Force as the appropriate officer in relation to a member of the Defence Force under paragraph 114A(2)(b) of the Act. Subsection 114A(1) of the Act provides that when an "appropriate officer" becomes aware that an employee has retired from their employment they must give written notice to Comcare.

Paragraph 4(b) of the 1990 Regulations prescribed the Commissioner of the Australian Federal Police as the appropriate officer for the purposes of section 114A of the Act. This paragraph has not been replicated because it was duplicated in Schedule 1 to the 1990 Regulations and was therefore redundant. Schedule 1 to the 1990 Regulations has been replicated in Schedule 4 to the Regulations.

SCHEDULES

Schedule 1 - Forms

Under paragraph 102(1)(a) of the Act, an application for a licence must be in the prescribed form. As provided under Regulation 10, Schedule 1 to the Regulations prescribes the form for an application for grant of licence.

Schedule 2 - Particulars for application

Under paragraph 102(1)(b) of the Act, an application for a licence is required to contain such particulars of the eligible applicant as the Regulations prescribe. As provided under Regulation 11, Schedule 2 to the Regulations prescribes the nature of those particulars.

Schedule 3 - Documents and information for licence applications

Under paragraph 102(1)(c) of the Act, an application for a licence is required to contain such other information, and be accompanied by such documents as the Regulations prescribe. As provided under Regulation 12, Schedule 3 to the Regulations prescribes the documents and information for licence applications.

Schedule 4 - Entities and principal officers

Schedule 4 to the Regulations replicates Schedule 1 to the repealed 1990 Regulations. Schedule 4 prescribes entities and principal officers for the purposes of the relevant definitions in section 4(1) of the Act.