

## EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment  
*Safety, Rehabilitation and Compensation Act 1988*  
Paragraph 4(1)

### **Safety, Rehabilitation and Compensation Amendment (Entities and Other Measures) Regulation 2016**

The *Safety, Rehabilitation and Compensation Act 1988* (the Act) establishes a workers' compensation scheme (the Comcare scheme) for employees of the Commonwealth, Commonwealth authorities and licensed corporations.

Section 122 of the Act allows the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Safety, Rehabilitation and Compensation Amendment (Entities and Other Measures) Regulation 2016* (the Amendment Regulation) is to remove the following two bodies from the list of prescribed 'Entities' in the *Safety, Rehabilitation and Compensation Regulations 2002* (the Principal Regulations):

- ComSuper
- Alligator Rivers Region Research Institute, also known as the Environmental Research Institute of the Supervising Scientist (ERISS).

Section 4 of the Act defines an 'Entity' to mean (a) an Agency, within the meaning of the *Public Service Act 1999*, that is not a Commonwealth authority, (b) a Parliamentary Department within the meaning of the *Parliamentary Service Act 1999*, or (c) a prescribed person, body, organisation or group of persons. Commonwealth authorities and 'Entities' pay premiums to Comcare under the Act.

Regulation 16 of the Principal Regulations provides that persons, bodies, organisations or groups listed in Schedule 4 to those Regulations are prescribed 'Entities' for the purposes of section 4 of the Act.

#### ComSuper

ComSuper is declared an 'Entity' under Item 6 of Schedule 4 to the Principal Regulations. ComSuper merged with the Commonwealth Superannuation Corporation (CSC), effective 1 July 2015, by enactment of the *Governance of Australian Government Superannuation Schemes Legislation Amendment Act 2015* (GAGSS Act). CSC is a 'Commonwealth authority' for the purposes of the Act.

Subitem 8 of Schedule 2 of the GAGSS Act provides that if an Act or instrument was in force immediately before the commencement of the GAGSS Act, and the Act or instrument contains a reference to ComSuper or the CEO of ComSuper, the Act or instrument has effect from commencement of the GAGSS Act as if the reference were a reference to CSC.

Consequently, CSC is now both an ‘Entity’ for the purposes of the Act and a ‘Commonwealth authority’. The Amendment Regulation removes ComSuper as a prescribed ‘Entity’ so that CSC will continue to have, and only have, the status of a ‘Commonwealth authority’ for the purposes of the Act.

### ERISS

ERISS is prescribed as an ‘Entity’ under Item 7 of Schedule 4 to the Principal Regulations.

ERISS is established under section 23 of the *Environment Protection (Alligator Rivers Region) Act 1978* (the EPARR Act). The *Environment Protection (Alligator Rivers Region) Amendment Act 1993* amended the EPARR Act so that ERISS, was subsumed into the Department of the Environment, Sport and Territories (as it was then known).

The Department of the Environment has requested that the Principal Regulations be amended to remove ERISS from the list of prescribed Entities in Item 7 of Schedule 4 to the Principal Regulations to allow the Department of the Environment to pay a single premium in respect of all of its employees, including those employed in the branch of the Supervising Scientist (reflecting that ERISS is no longer a separate entity and forms part of the department).

### Consequential amendment: reference to the *Public Governance, Performance and Accountability Act 2013*

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) has largely replaced the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

The Amendment Regulation updates references in the Principal Regulations to the CAC Act with references to the PGPA Act. In particular, the Amendment Regulation repeals the notes in subregulations 13A(3), 14A(3) and 15A(3) of the Principal Regulation and substitutes a revised note with updated references to the PGPA Act.

### The Amendment Regulation

The Act specifies no conditions that need to be satisfied before the power to make the Amendment Regulation may be exercised. Section 122 of the Act allows the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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

Consultation on the Amendment Regulation was undertaken with the Department of the Environment, who requested that ERISS be removed from the list of prescribed 'Entities'. Consultation was also undertaken with the Department of Finance who similarly requested that the Principal Regulations be amended in light of subitem 8 of Schedule 2 of the GAGSS Act. The changes to the Principal Regulations to update references to the CAC Act with references to the PGPA Act are consequential amendments and no consultation was required.

The Office of Best Practice Regulation has confirmed that a regulation impact statement is not required. (OBPR ID No. 20829)

The Amendment Regulation commences on 1 July 2016.

## Statement of Compatibility with Human Rights

### *Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011* **Safety, Rehabilitation and Compensation Amendment (Entities and Other Measures) Regulation 2016**

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

#### **Overview of the legislative instrument**

The *Safety, Rehabilitation and Compensation Act 1988* (the Act) establishes a workers' compensation scheme (the Comcare scheme) for employees of the Commonwealth, Commonwealth authorities and licensed corporations. Commonwealth authorities and 'Entities' pay premiums to Comcare under the Act.

The purpose of the *Safety, Rehabilitation and Compensation Amendment (Entities and Other Measures) Regulation 2016* (the Amendment Regulation) is to remove the following two bodies from the list of prescribed 'Entities' in the *Safety, Rehabilitation and Compensation Regulations 2002* (the Principal Regulations) following machinery of government changes:

- ComSuper
- Alligator Rivers Region Research Institute, also known as the Environmental Research Institute of the Supervising Scientist (ERISS)

The Amendment Regulation also replaces references in the Principal Regulations to the *Commonwealth Authorities and Companies Act 1997* with references to the *Public Governance, Performance and Accountability Act 2013* following commencement of that Act.

#### **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 'States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work'.<sup>1</sup>

The removal of ComSuper and ERISS from the list of prescribed 'Entities' reflects machinery of government changes and does not have the effect that the Act will cease to apply to employees. ComSuper was merged with CSC on 1 July 2015 under the *Governance of Australian Government Superannuation Schemes Legislation Amendment Act 2015*. ERISS was subsumed into the Department of the Environment as a result of legislative amendments

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<sup>1</sup> 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].

in 1993. Transitional arrangements for these machinery of government changes are dealt with by administrative arrangements or by legislative provisions. The removal of ComSuper and ERISS from the list of prescribed 'Entities' for the purposes of the Act does not engage Article 9 of the *International Covenant on Economic, Social and Cultural Rights* or any other human right.

Amendments to update references to the PGPA Act are technical consequential changes only and do not engage human rights.

**Conclusion**

This instrument is compatible with human rights because it does not raise any human rights issues.

**Senator the Hon Michaelia Cash**  
Minister for Employment