

## EXPLANATORY STATEMENT

### *Safety, Rehabilitation and Compensation Act 1988*

Issued by the Minister for Small and Family Business, the Workplace and Deregulation

### **Safety, Rehabilitation and Compensation Amendment (Australian Signals Directorate) Regulations 2018**

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

Section 122 of the Act provides that the Governor-General may 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.

Subsection 4(1) of the Act provides:

**“Entity”** means:

- (a) an Agency, within the meaning of the *Public Service Act 1999*, that is not a Commonwealth authority; or
- (b) a Parliamentary Department within the meaning of the *Parliamentary Service Act 1999*; or
- (c) a person, body, organisation or group of persons prescribed for this paragraph.

**“principal officer”**, in relation to an Entity, means:

- (a) if the Entity is an Agency that is not a Commonwealth authority—the Agency Head within the meaning of the *Public Service Act 1999*; or
- (b) if the Entity is a Parliamentary Department—the Secretary of the Parliamentary Department within the meaning of the *Parliamentary Service Act 1999*; or
- (c) if the Entity is a person, body, organisation or group of persons prescribed for paragraph (c) of the definition of **Entity**—the person prescribed as the principal officer.

From 1 July 2018, the Australian Signals Directorate (ASD):

- will be established on a statutory basis and will no longer be a part of the Department of Defence by operation of the *Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018*; and
- will not be an Agency within the meaning of the *Public Service Act 1999*, a Parliamentary Department within the meaning of the *Parliamentary Service Act 1999*, or a Commonwealth authority within the meaning of the Act.

This instrument amends the *Safety, Rehabilitation and Compensation Regulations 2002* (the Principal Regulations) made under section 122 of the Act to:

- prescribe ASD as an ‘Entity’, for the purposes of the Act, including to permit the charging of premiums and regulatory contributions under the Act;
- prescribe the Director-General of ASD as the ‘principal officer’ in relation to the ASD, for the purposes of the Act, including to permit the Director-General of ASD to perform functions and exercise powers of the rehabilitation authority in respect of employees of ASD; and
- clarify references to the Director-General of the Australian Secret Intelligence Service consistent with changes made to the *Intelligence Services Act 2001* by the *Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018*.

Details of this instrument are set out in the Attachment.

### **Consultation**

This instrument is machinery in nature. It was therefore not appropriate or reasonably practicable to undertake consultation in relation to this instrument. This instrument ensures that subsequent to ASD's establishment as a statutory authority independent from the Department of Defence, premiums and regulatory contributions are still payable in respect of ASD, and there remains a principal officer in relation to ASD and a rehabilitation authority in relation to employees of ASD. The update to the reference to the Director-General of the ASIS is consequential only and will not change the operation or application of the Act.

### **Regulation Impact Statement**

The Office of Best Practice Regulation was consulted regarding this instrument and indicated that a Regulatory Impact Statement was not required (OBPR ID: 23922).

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

This instrument commences on 1 July 2018.

**Safety, Rehabilitation and Compensation Amendment (Australian Signals Directorate) Regulations 2018**

**Section 1 - Name of Regulations**

This section would provide that the title of the Regulations is the *Safety, Rehabilitation and Compensation Amendment (Australian Signals Directorate) Regulations 2018*.

**Section 2 - Commencement**

This section would provide for the Regulations to commence on 1 July 2018.

**Section 3 - Authority**

This section would provide that the *Safety, Rehabilitation and Compensation Amendment (Australian Signals Directorate) Regulations 2018* is made under the *Safety, Rehabilitation and Compensation Act 1988*.

**Section 4 - Schedule(s)**

This section would provide that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 - Amendments**

**Item [1] - Schedule 4 (table item 2, column headed “Entity”, paragraph (b))**

Subregulation 16(1) of the Principal Regulations provides that, for paragraph (c) of the definition of Entity in subsection 4(1) of the Act, each person, body, organisation or group of persons mentioned in an item of Schedule 4 to the Principal Regulations is prescribed.

This item omits “Director-General” and substitutes “Director-General of the Australian Secret Intelligence Service” in table item 2, column headed “Entity”, paragraph (b), in Schedule 4 to the Principal Regulations.

**Item [2] - Schedule 4 (table item 2, column headed “Principal officer”)**

Subregulation 16(2) of the Principal Regulations provides that, for paragraph (c) of the definition of principal officer, in relation to an Entity, in subsection 4(1) of the Act, the principal officer of an Entity mentioned in column 2 of Schedule 4 to the Principal Regulations is the person from time to time holding or acting in the office mentioned in column 3 in relation to that Entity.

This item omits “Director-General” and substitutes “Director-General of the Australian Secret Intelligence Service” in table item 2, column headed “Principal officer”, in Schedule 4 to the Principal Regulations.

**Item [3] - Schedule 4 (after table item 2)**

Subregulation 16(1) of the Principal Regulations provides that, for paragraph (c) of the definition of Entity in subsection 4(1) of the Act, each person, body, organisation or group of persons mentioned in an item of Schedule 4 to the Principal Regulations is prescribed.

Subregulation 16(2) of the Principal Regulations provides that, for paragraph (c) of the definition of principal officer, in relation to an Entity, in subsection 4(1) of the Act, the principal officer of an

Entity mentioned in column 2 of Schedule 4 to the Principal Regulations is the person from time to time holding or acting in the office mentioned in column 3 in relation to that Entity.

This item:

- inserts new table item 2A in Schedule 4 to the Principal Regulations;
- inserts “Australian Signals Directorate” in table item 2A, column headed “Entity”, in Schedule 4 to the Principal Regulations; and
- inserts “Director-General of the Australian Signals Directorate” in table item 2A, column headed “Principal officer”, in Schedule 4 to the Principal Regulations.

## 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 (Australian Signals Directorate) Regulations 2018**

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**

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

Section 122 of the Act provides that the Governor-General may 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.

This instrument amends the *Safety, Rehabilitation and Compensation Regulations 2002* made under section 122 of the Act to:

- prescribe the Australian Signals Directorate (ASD) as an 'Entity', for the purposes of the Act, including to permit the charging of premiums and regulatory contributions under the Act;
- prescribe the Director-General of ASD as the 'principal officer' in relation to the ASD, for the purposes of the Act, including to permit the Director-General of ASD to perform functions and exercise powers of the rehabilitation authority in respect of employees of ASD; and
- clarify references to the Director-General of the Australian Secret Intelligence Service (ASIS) consistent with changes made to the *Intelligence Services Act 2001* by the *Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018*.

#### **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'.<sup>1</sup> 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.

The Act provides rehabilitation, compensation and other benefits to, or in respect of, injured employees.

This instrument, which is made under the Act, engages but does not limit human rights. It relevantly ensures that employees of ASD have a rehabilitation authority, and clarifies the description of the rehabilitation authority for employees of ASIS, from 1 July 2018.

This instrument does not alter the workers' compensation rights, entitlements or obligations of employees of ASD or ASIS and so does not limit the right to social security.

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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].

## **Conclusion**

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

**The Hon Craig Laundy MP**

Minister for Small and Family Business, the Workplace and Deregulation