

## EXPLANATORY STATEMENT

*Safety, Rehabilitation and Compensation Act 1988*

Issued by the Minister for Jobs and Industrial Relations

### **Safety, Rehabilitation and Compensation (Specified Number for Redemption of Compensation) Instrument 2019**

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

Pursuant to Part 2, Division 3 of the SRC Act, compensation is payable to an employee who is incapacitated for work as a result of an injury. Subsection 30(1) of the SRC Act provides that if:

- (a) Comcare is liable to make weekly payments under section 19, 20, 21 or 21A to an employee in respect of an injury resulting in an incapacity; and
- (b) the amount of those payments is \$50 per week or less; and
- (c) Comcare is satisfied that the degree of the employee's incapacity is unlikely to change;

Comcare shall make a determination that its liability to make further payments to the employee under that section be redeemed by the payment to the employee of a lump sum.

The amount prescribed in paragraph 30(1)(b) is indexed annually pursuant to section 13 of the SRC Act. As at 1 July 2018, the maximum allowable weekly payments for the purposes of paragraph 30(1)(b) was \$118.37.

The amount of lump sum payable under subsection 30(1) of the SRC Act is calculated using the formula prescribed by subsection 30(2) of the SRC Act. This instrument is made under subsection 30(4) of the SRC Act. Subsection 30(4) provides that the Minister may, from time to time, by legislative instrument, specify a number (a rate) for the purposes of this formula.

In item 5 of this instrument, the Minister specifies a rate of 0.03 for the purposes of subsection 30(2) of the SRC Act. This specification maintains the number previously specified in the *Safety, Rehabilitation and Compensation Act 1988 - Notice Specifying a Number for Redemption of Compensation (Notice No. R1 of 1994)* (the 1994 Notice). This rate is intended to ensure that an eligible employee will receive the net present value of their entitlements to weekly payments as a lump sum amount, taking into account the interest that an employee can reasonably accrue on the amount.

To provide certainty that there will be no concurrent operation of this instrument and the 1994 Notice, Schedule 1 to this instrument repeals 1994 Notice.

Item 2 of this instrument provides that this instrument will commence on the day after it is registered on the Federal Register of Legislation.

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

### **Consultation**

The Department of Jobs and Small Business consulted employer and employee representatives, Comcare and the Department of Veterans' Affairs. Most stakeholders supported making the instrument with the specified number of 0.03. The Australian Council

of Trade Unions submitted that this number should be set at nil (0.00). However, the intention of the relevant provisions is to ensure that if an entitlement to weekly compensation payments is redeemed, the employee is paid the net present value of their entitlements as a lump sum, taking into account the interest the employee can reasonably accrue on the amount. In this context, a specified number of 0.03 remains appropriate.

### **Regulation Impact Statement**

The Office of Best Practice Regulation has confirmed that a regulation impact statement is not required (OBPR ID 24656).

## Statement of Compatibility with Human Rights

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

### Safety, Rehabilitation and Compensation (Specified Number for Redemption of Compensation) Instrument 2019

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* (SRC Act) establishes the Commonwealth workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations.

Pursuant to Part 2, Division 3 of the SRC Act, compensation is payable to an employee who is incapacitated for work as a result of an injury. Subsection 30(1) of the SRC Act provides that if:

- (a) Comcare is liable to make weekly payments under section 19, 20, 21 or 21A to an employee in respect of an injury resulting in an incapacity; and
- (b) the amount of those payments is \$50 per week or less (subject to indexation under section 13); and
- (c) Comcare is satisfied that the degree of the employee's incapacity is unlikely to change;

Comcare shall make a determination that its liability to make further payments to the employee under that section be redeemed by the payment to the employee of a lump sum.

The amount of lump sum payable under subsection 30(1) of the SRC Act is calculated using the formula prescribed by subsection 30(2) of the SRC Act. Subsection 30(4) provides that the Minister may from time to time, by legislative instrument, specify a number for the purposes of this formula.

In this instrument, the Minister specifies the number of 0.03 for the purposes of subsection 30(2) of the SRC 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 SRC Act provides support for employees who have been injured at work by way of rehabilitation, weekly compensation payments, payment of medical expenses, permanent impairment benefits as well as other benefits.

Redemption of compensation under the SRC Act provides employees with the benefit of a lump sum payment of their incapacity entitlements under the Act, when their weekly

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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].

payments are less than a threshold amount. The specified rate is intended to ensure that an eligible employee will receive the net present value of their entitlements as a lump sum amount, taking into account the interest the employee can reasonably accrue on the amount.

### **Conclusion**

This legislative instrument is compatible with human rights because, where it engages the right to social security, it ensures that an employee who has an injury resulting in an incapacity for work is paid the net present value of their entitlements to weekly payments as a lump sum under the SRC Act, rather than receiving small weekly payments.

**The Hon Kelly O'Dwyer MP**

Minister for Jobs and Industrial Relations