

## EXPLANATORY STATEMENT

*Safety, Rehabilitation and Compensation Act 1988*

Issued by the Minister for Jobs and Industrial Relations

### **Safety, Rehabilitation and Compensation (Specification of Medical Examination Interval) 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. For the purposes of the SRC Act, Comcare and licensees are relevant authorities responsible for determining liability and managing claims under the Act.

Section 57 of the SRC Act provides that where a notice has been given to a relevant authority under section 53 in relation to an employee, or where an employee has made a claim for compensation under section 54, the relevant authority may require the employee to undergo an examination by one legally qualified medical practitioner nominated by the relevant authority. If the employee refuses or fails, without reasonable excuse, to undergo the examination, or in any way obstructs the examination, the employee's rights to compensation under the Act, and to institute or continue any proceedings under the Act in relation to compensation, are suspended until the examination takes place.

Section 57 is qualified by subsection 57(6) of the SRC Act, which provides that an employee shall not be required to undergo an examination under section 57 at more frequent intervals than are specified by the Minister by legislative instrument.

This instrument is made by the Minister under subsection 57(6) of the SRC Act. It specifies that an employee shall not be required to undergo an examination by the same legally qualified medical practitioner nominated by the relevant authority under section 57 more frequently than at one-month intervals (subsection 6(1) of this instrument). The specified interval only applies if the employee undergoes the examination (subsection 6(2) of this instrument).

Section 5 provides that the instrument applies in relation to an examination that an employer may require the employee to undergo pursuant to section 57 of the SRC Act after the commencement of this instrument.

For the avoidance of doubt, the interval specified in this instrument is the minimum interval for which an employee can be required to undergo an examination under section 57 of the SRC Act. This instrument does not specify, or imply, that employees should be required to undergo an examination at such intervals under section 57 of the SRC Act.

Section 2 of this instrument provides that this instrument takes effect from 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 with Comcare, licensees, Australian Public Service agencies, the Australian Capital Territory Government and the Australian Council of Trade Unions.

## **Regulation Impact Statement**

The Office of Best Practice Regulation confirmed that a Regulation Impact Statement is not required (OBPR ID 24112).

## Statement of Compatibility with Human Rights

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

### Safety, Rehabilitation and Compensation (Specification of Medical Examination Interval) Instrument 2019

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* (SRC Act) establishes the Commonwealth workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations. For the purposes of the SRC Act, Comcare and licensees are relevant authorities responsible for determining liability and managing claims under the Act.

Section 57 of the SRC Act provides that, where a notice has been given to a relevant authority under section 53 in relation to an employee, or an employee has made a claim for compensation under section 54, the relevant authority may require the employee to undergo an examination by one legally qualified medical practitioner nominated by the relevant authority. If the employee refuses or fails, without reasonable excuse, to undergo the examination, or in any way obstructs the examination, the employee's rights to compensation under the Act, and to institute or continue any proceedings under the Act in relation to compensation, are suspended until the examination takes place.

Section 57 is qualified by subsection 57(6) of the SRC Act, which provides that an employee shall not be required to undergo an examination under section 57 at more frequent intervals than are specified by the Minister by legislative instrument.

This instrument is made by the Minister under subsection 57(6) of the SRC Act to specify that an employee shall not be required to undergo an examination by the same legally qualified medical practitioner nominated by the relevant authority under section 57 more frequently than at one-month intervals. The specified interval only applies if the employee undergoes the examination.

For the avoidance of doubt, the interval specified in this instrument is the minimum interval for which an employee can be required to undergo an examination under section 57 of the SRC Act. This instrument does not specify, or imply, that employees should be required to undergo an examination at such intervals under section 57 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 the 'States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work'.<sup>1</sup>

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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].

The workers' compensation scheme established by the SRC Act is a form of social insurance which relevantly provides rehabilitation and compensation support for employees with work-related injuries.

This instrument positively engages the right to social security by protecting injured employees from the requirement to attend medical examinations with the same legally qualified medical practitioner more frequently than is necessary for the relevant authority to determine their entitlements under the SRC Act.

### **Conclusion**

This legislative instrument is compatible with human rights.

**The Hon Kelly O'Dwyer MP**

Minister for Jobs and Industrial Relations