

EXPLANATORY STATEMENT

Seafarers Rehabilitation and Compensation Act 1992

Issued by the Minister for Jobs and Industrial Relations

Seafarers Rehabilitation and Compensation (Specification of Medical Examination Interval) Instrument 2019

The *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) provides workers' compensation and rehabilitation arrangements for employees in a defined part of the Australian maritime industry. The Seafarers Act operates in conjunction with the *Occupational Health and Safety (Maritime Industry) Act 1993* to establish the 'Seacare scheme'.

Pursuant to the Seafarers Act, the employers of such employees are responsible for determining liability and paying compensation entitlements in accordance with that Act.

Section 66 of the Seafarers Act provides that if a notice has been given under section 62 in relation to an injury to an employee, or if an employee has made a claim for compensation under section 63, the employer to whom the notice or claim is given may require the employee to undergo an examination by one legally qualified medical practitioner nominated by the employer. If the employee, without reasonable excuse, does not 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 66 of the Seafarers Act is qualified by subsection 66(6), which provides that an employee must not be required to undergo an examination under section 66 at more frequent intervals than are specified by the Minister by legislative instrument.

Section 83A of the Seafarers Act provides that if a claimant has requested an employer to reconsider a determination under subsection 78(2), the employer may, by written notice given to the claimant, require the employee to undergo an examination by one legally qualified medical practitioner nominated by the employer and require the claimant to give the employer a report by the medical practitioner of the results of the examination. If the employer does not receive such a report, the employer may refuse to reconsider the determination under section 78 until the employer receives the report.

Section 83A of the Seafarers Act is qualified by subsection 83A(9), which provides that an employee must not be required to undergo an examination under section 83A at more frequent intervals than are stated by the Minister by legislative instrument.

This instrument is made by the Minister under subsections 66(6) and 83A(9) of the Seafarers Act to specify that an employee must not be required to undergo an examination by the same legally qualified medical practitioner nominated by the employer under section 66 or section 83A more frequently than at one-month intervals. The specified interval only applies if the employee undergoes the examination.

For the avoidance of doubt, the intervals specified in this instrument are the minimum intervals for which employees can be required to undergo an examination under sections 66 and 83A of the Seafarers Act. This instrument does not specify, or imply, that employees should be required to undergo an examination at such intervals under sections 66 and 83A of the Seafarers Act.

Section 2 of this instrument provides that this instrument commences the day after it is registered on the Federal Register of Legislation.

Details of the provisions of this instrument are set out in Attachment A.

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, the Seacare Authority, Comcare and the Australian Maritime Safety Authority.

Regulation Impact Statement

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

Section 1 – Name

Section 1 provides that the instrument is the *Seafarers Rehabilitation and Compensation (Specification of Medical Examination Interval) Instrument 2019*.

Section 2 – Commencement

Section 2 provides that this instrument takes effect from the day after it is registered on the Federal Register of Legislation

Section 3 – Authority

Section 3 provides the instrument is made under subsections 66(6) and 83A(9) of the Seafarers Act.

Section 4 – Definitions

Section 4 of this instrument contains definitions. In particular, it clarifies who the ‘employer’ is for the purposes of section 6 of the instrument.

Section 5 – Schedules

Section 5 is a standard provision with the effect that instruments are repealed as set out in the Schedule 1. The following instruments, or items of instruments, are repealed by Schedule 1:

Seafarers Rehabilitation and Compensation Act 1992 – Seacare Authority Notice No. 1 of 1997

Item 1 of Schedule 1 to this instrument repeals the *Seafarers Rehabilitation and Compensation Act 1992 – Seacare Authority Notice No. 1 of 1997* (1997 Notice). The 1997 Notice specified the intervals of medical examinations under subsection 83A(9) of the Seafarers Act. It also specified a kilometre rate for journeys to which subsections 66(4B) and 83A(5) apply. The *Seafarers Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2008 (1)* (F2008L02333) currently specifies the kilometre rate in respect of those journeys.

Item 3 of the Seafarers Rehabilitation and Compensation Act 1992 – Notice of Declarations and Specifications (25/05/1993)

Item 2 of Schedule 1 repeals item 3 of the *Seafarers Rehabilitation and Compensation Act 1992 – Notice of Declarations and Specifications (25/05/1993)* (1993 Notice) to provide certainty that there will be no concurrent operation of this instrument and item 3 of the 1993 Notice. Item 3 of the 1993 Notice specified that the intervals between examinations by the same practitioner under subsection 66(6) of the Seafarers Act, shall not be less than one month if an employee is in receipt of weekly payments of compensation and had been subject to an assessment under section 49 of the Seafarers Act.

Section 6 – Specification

Section 6 provides an employee must not be required to undergo an examination by the same legally qualified medical practitioner nominated by the employer under section 66 or section 83A of the Seafarers Act more frequently than at one-month intervals (see subsections 6(1) and (2) of the instrument). The specified interval only applies if the employee undergoes the examination (see subsection 6(3) of the instrument).

Section 7 – Application

Section 7 provides that section 6 applies in relation to an examination that an employer may require the employee to undergo pursuant to section 66 or 83A of the Seafarers Act after the commencement of this instrument.

Statement of Compatibility with Human Rights

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

Seafarers 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

Section 66 of the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) provides that if a notice has been given under section 62 in relation to an injury to an employee, or if an employee has made a claim for compensation under section 63, the employer to whom the notice or claim is given may require the employee to undergo an examination by one legally qualified medical practitioner nominated by the employer. If the employee, without reasonable excuse, does not 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 66 of the Seafarers Act is qualified by subsection 66(6), which provides that an employee must not be required to undergo an examination under section 66 at more frequent intervals than are specified by the Minister by legislative instrument.

Section 83A of the Seafarers Act provides that if a claimant has requested an employer to reconsider a determination under subsection 78(2), the employer may, by written notice given to the claimant, require the employee to undergo an examination by one legally qualified medical practitioner nominated by the employer and require the claimant to give the employer a report by the medical practitioner of the results of the examination. If the employer does not receive such a report, the employer may refuse to reconsider the determination under section 78 until the employer receives the report.

Section 83A of the Seafarers Act is qualified by subsection 83A(9), which provides that an employee must not be required to undergo an examination under section 83A at more frequent intervals than are stated by the Minister by legislative instrument.

This instrument is made by the Minister under subsections 66(6) and 83A(9) of the Seafarers Act to specify that an employee must not be required to undergo an examination by the same legally qualified medical practitioner nominated by the employer under section 66 or section 83A more frequently than at one-month intervals. The specified interval is a minimum interval that only applies if the employee undergoes the examination.

For the avoidance of doubt, the intervals specified in this instrument are the minimum intervals for which employees can be required to undergo an examination under sections 66 and 83A of the Seafarers Act. This instrument does not specify, or imply, that employees should be required to undergo an examination at such intervals under sections 66 and 83A of the Seafarers 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’.¹

The workers’ compensation scheme established by the Seafarers 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 employer to determine their entitlements, or to reconsider a determination in relation to their entitlements, under the Seafarers Act.

Conclusion

This legislative instrument is compatible with human rights.

The Hon Kelly O’Dwyer MP

Minister for Jobs and Industrial Relations

¹ 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].