

EXPLANATORY STATEMENT

Seafarers Rehabilitation and Compensation Act 1992

Issued by the Minister for Jobs and Industrial Relations

Seafarers Rehabilitation and Compensation (Specified Rate for Redemption of Compensation) 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 Part 2, Division 3 of the Seafarers Act, compensation is payable to an employee who is incapacitated for work as a result of an injury. Subsection 44(1) of the Seafarers Act provides that if:

- (a) an employer is liable to make weekly payments under section 31, 33, 34, 35 or 36 to an employee for an injury resulting in an incapacity; and
- (b) the amount of those payments is \$62.99 per week or less; and
- (c) the employer is satisfied that the degree of the employee's incapacity is unlikely to change;

the employer must make a determination that any 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 44(1)(b) is indexed annually pursuant to section 23 of the Seafarers Act. As at 1 July 2018, the maximum amount of weekly payments for the purposes of paragraph 44(1)(b) is \$118.37.

The amount of lump sum payable under subsection 44(1) of the Seafarers Act is calculated using the formula prescribed by subsection 44(2) of the Seafarers Act. This instrument is made under subsection 44(3) of the Seafarers Act. Subsection 44(3) provides that the Minister may from time to time, by legislative instrument, specify 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 44(2) of the Seafarers Act. This rate maintains the number previously specified in item 2 of the *Seafarers Rehabilitation and Compensation Act 1992 – Notice of Declarations and Specifications (25/05/1993)* (1993 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 item 2 of the 1993 Notice, Schedule 1 to this instrument repeals item 2 of the 1993 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, the Seacare Authority and the Australian Maritime Safety Authority. Most stakeholders supported making the instrument with the specified rate of 0.03. The Australian Council of Trade Unions submitted that this rate 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 rate 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*

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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 *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.

Pursuant to Part 2, Division 3 of the Seafarers Act, compensation is payable to an employee who is incapacitated for work as a result of an injury. Subsection 44(1) of the Seafarers Act provides that if:

- (a) an employer is liable to make weekly payments under section 31, 33, 34, 35 or 36 to an employee for an injury resulting in an incapacity; and
- (b) the amount of those payments is \$62.99 per week or less (subject to indexation under section 23); and
- (c) the employer is satisfied that the degree of the employee's incapacity is unlikely to change;

the employer must make a determination that any 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 44(1) of the Seafarers Act is calculated using the formula prescribed by subsection 44(2) of the Seafarers Act. Subsection 44(3) provides that the Minister may from time to time, by legislative instrument, specify a rate for the purposes of this formula.

In this instrument, the Minister specifies a rate of 0.03 for the purposes of subsection 44(2) 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 'States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work'.¹

The Seafarers 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 Seafarers Act provides employees with the benefit of a lump sum payment of their entitlements to weekly payments for an injury resulting in an

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].

incapacity under the Act, when their weekly 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 to weekly payments as a lump sum amount, taking into account the interest that an 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 Seafarers Act, rather than receiving small weekly payments.

The Hon Kelly O'Dwyer MP
Minister for Jobs and Industrial Relations