

EXPLANATORY STATEMENT

Seafarers Rehabilitation and Compensation Act 1992

Issued by the Minister for Jobs and Industrial Relations

Seafarers Rehabilitation and Compensation (Rate of Interest Payable – s130(3)) Instrument 2019

The *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) provides workers' compensation and rehabilitation arrangements for seafarers 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'.

The Seafarers Act provides for lump sum payments to claimants for injuries which result in permanent impairment or death. The Seafarers Act provides for the determination of the amount of compensation for:

- permanent impairment—under sections 39 and 41 (if applicable) and related interim payments under section 40; and
- injuries resulting in death—under section 29.

The Seafarers Act provides that interest is payable for late payment except in the circumstances of certain reconsideration and review processes (section 130). If payment is not made to a claimant under section 29, 39, 40 or 41 within 30 days after the date of determination of the amount, interest is payable to the claimant on that amount (subsection 130(2)). Interest is payable for the period from the 31st day after the date of determination to the day on which the compensation amount is paid.

Subsection 130(3) allows the Minister to specify the rate of interest for the purposes of this section by legislative instrument.

Item 5 of this instrument specifies the rate of interest payable to be 5 per cent per annum.

This maintains the same rate of interest as that which was specified by item 4 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 4 of the 1993 Notice, Schedule 1 to this instrument repeals item 4 of the 1993 Notice. The 1993 Notice will sunset on 1 April 2019 as a result of the operation of section 50 of the *Legislation Act 2003*.

Item 2 of this instrument provides that this instrument commences 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, 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 24218).

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 seafarers in a defined part of the Australian maritime industry.

This instrument sets the rate of interest payable in respect of certain late payments made to a claimant under section 29, 39, 40 or 41 of the Seafarers Act. These relate to permanent impairment payments (including interim payments of compensation for permanent impairment) and compensation for injuries resulting in death, which are not made within 30 days after the date of the determination, except where a certain reconsideration or a certain review is underway.

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.

The interest rate in respect of a lump sum for permanent impairment and for injuries resulting in death engages the right to social security by ensuring that, if a lump sum amount is payable, that it be paid promptly or the claimant will be entitled to interest, as specified in this instrument, on that lump sum.

Conclusion

This legislative instrument is compatible with human rights because, where it engages the right to social security, it encourages the prompt payment of an amount of compensation to a claimant or compensates for the late payment of that amount by awarding interest to the claimant in respect of the overdue amount.

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].