

EXPLANATORY STATEMENT

Safety, Rehabilitation and Compensation Act 1988

Issued by the Minister for Jobs and Industrial Relations

Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Amendment Instrument 2019

The *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) provides rehabilitation support for employees of the Commonwealth and licensed corporations. The SRC Act also provides workers' compensation for those employees and their dependants.

Subject to the SRC Act, liability to provide rehabilitation and make certain compensation payments arises in respect of an 'injury' suffered by an employee. The term 'injury' is relevantly defined to include a 'disease' suffered by an employee (paragraph 5A(1)(a)), unless the 'disease' is excluded from the definition by operation of subsection 5A(1) (concerning reasonable administrative action) or subsection 7(7) (concerning wilful and false representation).

For a 'disease' to be suffered by an employee for the purposes of paragraph 5A(1)(a), the requirements of subsection 5B(1) (noting the effect of subsections 7(1), (2), (3) and (8)) must be satisfied.

In the *Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Instrument 2017* (Specified Diseases and Employment Instrument), the Minister specified, for the purposes of subsection 7(1) of the SRC Act, the circumstances in which employment is deemed to have contributed, to a significant degree, to the contraction of a disease suffered by an employee.

The Specified Diseases and Employment Instrument specifies what are commonly referred to as occupational diseases. An occupational disease is a disease associated with a particular kind of employment because the employment involves a particular risk.

Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Amendment Instrument 2019

The purpose of this instrument is to make corrections to two typographical errors in the Specified Diseases and Employment Instrument as outlined in Schedule 1. The corrections do not alter the application or effect of the Specified Diseases and Employment Instrument.

Details of Schedule 1 to this instrument are set out in [Attachment A](#).

This instrument is made under subsection 7(1) of the SRC Act.

Under subsection 33(3) of the Acts Interpretation Act 1901, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Item 2 of this instrument provides 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.

Regulation Impact Statement

The Office of Best Practice Regulation has confirmed that a Regulation Impact Statement is not required (OBPR ID 23941).

Schedule 1—Amendments

Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Instrument 2017

Item 1 – Schedule 1 (table item 43, column 2, subparagraph (b)(iv))

At paragraph (b) of item 43 of Schedule 1 of the Specified Diseases and Employment Instrument, which is the entry for *Bursitis at the knee*, ‘involves recurrent external friction at or about the knee’ is specified at both subparagraphs (iii) and (iv). The second reference to ‘friction’ in subparagraph (iv) should be a reference to ‘pressure’, so that both ‘friction’ and ‘pressure’ are specified. This Instrument merely corrects that typographical error.

The intention that both ‘pressure’ and ‘friction’ be specified was made clear in the explanatory statement to the Specified Diseases and Employment Instrument, which provides:

For the purposes of [item 43], the employment-related risk arises from a specified work activity that: [...] in the case of bursitis at the knee: involves prolonged or recurrent external friction or pressure at or about the knee.

The reference to both ‘pressure’ and ‘friction’ is also consistent with the *Deemed Diseases in Australia* report by Dr Tim Driscoll – see pages 33 and 41. The report can be accessed for free on the Safe Work Australia website: <https://www.safeworkaustralia.gov.au/doc/deemed-diseases-australia>.

This item amends subparagraph 43(b)(iv) so that it correctly refers to ‘pressure’ instead of ‘friction’.

Item 2 – Schedule 2 (table item 22, column 2, paragraph (a) (second occurring))

This item corrects the numbering in the list of plants and sensitising agents or irritants derived from plants at item 22 of schedule 2.

Item 3 – Transitional (operation for the purposes of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*)

The Specified Diseases and Employment Instrument also operates for the purposes of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* because of item 63 of Schedule 1 to the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017*.

The *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* is administered by the Minister for Veterans’ Affairs.

This item confirms that the amendments of the Specified Diseases and Employment Instrument made by this instrument do not apply in relation to the operation of the Specified Diseases and Employment Instrument for the purposes of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

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 Diseases and Employment) Amendment 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) provides rehabilitation support for employees of the Commonwealth and licensed corporations. The SRC Act also provides workers' compensation for those employees and their dependants.

In the *Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Instrument 2017* (Specified Diseases and Employment Instrument), the Minister specified the circumstances in which employment is deemed to have contributed, to a significant degree, to the contraction of a disease suffered by an employee.

The Specified Diseases and Employment Instrument specifies what are commonly referred to as occupational diseases. An occupational disease is a disease associated with a particular kind of employment because the employment involves a particular risk.

This instrument makes corrections to two typographical errors in the Specified Diseases and Employment Instrument.

Item 1

At paragraph (b) of item 43 of Schedule 1, which is the entry for *Bursitis at the knee*, 'involves recurrent external friction at or about the knee' is specified at both subparagraphs (iii) and (iv). The second reference to 'friction' in subparagraph (iv) should be a reference to 'pressure', so that both 'friction' and 'pressure' are specified. This Instrument merely corrects that typographical error.

The intention that both 'pressure' and 'friction' be specified was made clear in the explanatory statement to the Specified Diseases and Employment Instrument, which provides:

For the purposes of [item 43], the employment-related risk arises from a specified work activity that: [...] in the case of bursitis at the knee: involves prolonged or recurrent external friction or pressure at or about the knee.

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This item amends subparagraph 43(b)(iv) so that it correctly refers to 'pressure' instead of 'friction'.

Item 2

This item corrects the numbering in the list of plants and sensitising agents or irritants derived from plants at item 22 of schedule 2.

Item 3

This item confirms that the amendments of the Specified Diseases and Employment Instrument made by this instrument do not apply in relation to the operation of the Specified Diseases and Employment Instrument for the purposes of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*, which is administered by the Minister for Veterans' Affairs.

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 Workers' compensation is analogous to social insurance in that it provides payment of wages and medical costs to employees for injuries occurring as a result of their employment.

The Specified Diseases and Employment Instrument assists an employee (or his or her dependants) in relation to a claim made in respect of a disease of a kind specified in the instrument, where the employee was engaged by the Commonwealth or a licensed corporation in employment of a kind specified in the instrument before symptoms of the disease first became apparent. It does this by enlivening subsection 7(1) of the SRC Act, which effectively reverses the onus of proof in relation to the claimed disease. This reduces the evidentiary burden on the claimant for the purposes of establishing an entitlement to workers' compensation and other benefits under the SRC Act.

If an employee does not satisfy the requirements of an item of the Specified Diseases and Employment Instrument (for example, by not meeting the minimum employment period specified for that item), it remains open for the employee (or his or her dependants) to otherwise establish, on the balance of probabilities, that the disease was contributed to, to a significant degree, by the employee's employment with the Commonwealth or a licensed corporation.

This legislative instrument clarifies, and does not alter the application or effect of, the *Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Instrument 2017* by correcting two typographical errors.

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].