

EXPLANATORY STATEMENT

Safety, Rehabilitation and Compensation Act 1988

Issued by the Minister for Jobs and Industrial Relations

Safety, Rehabilitation and Compensation Directions 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.

The Safety, Rehabilitation and Compensation Commission (the Commission) is established by section 89A of the SRC Act. The Commission has a number of functions and powers under the SRC Act, including the granting of licences to eligible applicants under Part VIII of the SRC Act.

Pursuant to section 89D of the SRC Act, the Minister may give a direction to the Commission with respect to the performance of its functions or the exercise of its powers under the SRC Act. Section 101 of the SRC Act provides that the Minister's power to give directions to the Commission under section 89D of the SRC Act extends to directions concerning any matter relating to the grant of licences under Part VIII of the SRC Act.

Pursuant to these provisions, the Minister, in this instrument, gives directions to the Commission with respect to the performance of its functions and the exercise of its powers under the SRC Act in relation to the following:

- the grant of licences;
- determination of the scope and conditions of licence;
- the suspension and revocation of licences;
- notification of licence decisions; and
- recordkeeping and reporting.

This instrument repeals and substantially replicates the *Safety, Rehabilitation and Compensation Directions 2002* with updates to reflect the *Safety, Rehabilitation and Compensation Regulations 2019* (2019 Regulations). Details of the provisions of the instrument are at [Attachment A](#).

This instrument commences the day after it is registered on the Federal Register of Legislation. The substantive provisions of the instrument commence the later of the day after registration, or the commencement of the 2019 Regulations (see also the notes to section 2 of the instrument in Attachment A).

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*, but is not subject to disallowance (see item 2 of section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015*) or sunseting (see item 3 of section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

Consultation

Stakeholder consultations were conducted in February 2019. The Department of Jobs and Small Business consulted with employee representatives (including the Australian Council of Trade Unions, unions and lawyers); the Safety, Rehabilitation and Compensation Licensees Association; licensees; Comcare and the Commission.

For the consultation, stakeholders were provided with a draft version of this instrument, and were invited to provide feedback. Where appropriate, feedback received by stakeholders in the consultation process has been incorporated into the instrument.

Regulation Impact Statement

The Office of Best Practice Regulation confirmed that neither a Regulation Impact Statement nor a certification letter was required (OBPR ID 24668).

Part 1—Preliminary

Section 1 – Name

1. The name of these directions is the *Safety, Rehabilitation and Compensation Directions 2019*.

Section 2 – Commencement

2. Sections 1 to 3 commence on the day after this instrument is registered on the Federal Register of Legislation.
3. The rest of the instrument (that is, the other provisions and Schedule 1) commences on the later of either the start of the day the instrument is registered on the Federal Register of Legislation, or immediately after the 2019 Regulations commence. If the 2019 Regulations do not commence, then neither does the rest of this instrument. This is to ensure that these Directions only commence after the commencement of the 2019 Regulations.

Section 3 – Authority

4. This instrument is made under s 89D of the SRC Act.

Section 4 – Definitions

5. A note to s 4 alerts the reader that a number of terms used in the instrument are defined in s 4(1) of the SRC Act.
6. Section 4 also confirms that the ‘Act’ refers to the *Safety, Rehabilitation and Compensation Act 1988*, ‘preserved licence’ has the same meaning as in the *Safety, Rehabilitation and Compensation Regulations 2019* and ‘Regulations’ refers to the *Safety, Rehabilitation and Compensation Regulations 2019*.

Section 5 – Schedules

7. This is a standard provision which provides that each instrument that is specified in the schedules to this instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule has effect according to its terms.

Part 2—Criteria and procedures—grant of licences

Section 6 – Matters to be considered in deciding whether to grant a licence—Commonwealth authorities

8. Section 6 provides that the Commission must not grant a licence to a Commonwealth authority that has applied for a grant of licence, other than the Australian Capital Territory, under section 104 of the SRC Act, unless the Commission is satisfied that claims will be managed by employees of:

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- the applicant;
 - Comcare;
 - a Comcare subsidiary;
 - another Commonwealth authority.
9. Section 6 operates in conjunction with section 11, which deals with who may manage claims on behalf of a licensed authority.

Section 7 – Matters to be considered in deciding whether to grant a licence—eligible corporations

10. Section 7 provides that the Commission must not grant a licence to an eligible corporation under section 104 of the SRC Act unless the Commission is satisfied, on reasonable grounds, that satisfactory arrangements have been made to ensure that payments that would be required to be made under the SRC Act to, or in respect of, the eligible corporation’s employees will continue to be paid if that corporation is wound up.

Section 8 – Licence decision

11. Subsection 8(1) provides that the written notice informing the applicant of the Commission’s decision to grant the licence sought in accordance with subsection 104(1) of the SRC Act, must specify all of the following:
- the scope of the licence so far as concerns the degree to which, and the circumstances in which, the licensee may accept liability for compensation; and
 - the scope of the licence so far as concerns the degree to which, and the circumstances in which, the licensee is authorised to manage claims; and
 - the conditions to which the grant of the licence is subject; and
 - the period for which the licence is granted.
12. Subsection 8(2) provides that the Commission must publish the written notice in the *Gazette* or by notifiable instrument.

Part 3—Scope and conditions of licence

Division 3.1—Licences granted to Commonwealth authorities

Section 9 – Application

13. Section 9 provides that Division 3.1 applies to a licence granted by the Commission to a Commonwealth authority.

Section 10 – Acceptance of liability – prior Class 3 licence or Class A or B licence

14. Section 10 provides that, if immediately before 1 April 2002, a licensed authority held a Class 3 licence under Part VIIIA of the SRC Act or a Class A or B licence under Part VIIIB of the SRC Act, the Commission may authorise the licensee to accept liability to pay compensation and other amounts under the SRC Act for a particular injury, loss or damage suffered by, or for the death of, some or all of its employees for claims for an injury, loss, damage or death that occurred during the period for which

that previous licence was in force; or that occurs during the period specified in the licence.

Section 11 – Claims management

15. Section 11 provides that the Commission may only grant a licence to a Commonwealth authority, other than the Australian Capital Territory, that authorises the licensee, or a specified person acting on the licensee's behalf, to manage claims under the SRC Act, if the licence authorises one or more of the following persons to manage claims on behalf of the licensee:
- Comcare;
 - a Comcare subsidiary;
 - employees of Comcare or of a Comcare subsidiary;
 - another Commonwealth authority;
 - employees of another Commonwealth authority.

Division 3.2—Licences granted to eligible corporations

Section 12 – Application

16. Section 12 provides that Division 3.2 applies to a licence granted by the Commission to a corporation (other than a corporation that is a Commonwealth authority).

Section 13 – Conditions

17. Section 13 provides that the Commission may include one or more of the following conditions in the licence of a licensed corporation:
- if requested in writing by the Commission to do so, the licensee must give to the Commission the information relating to the licensee's operations under the SRC Act that is specified in the request;
 - the licensee must lodge with the Commission, within 120 days after the end of each accounting period (or, if the Commission allows a longer period, within that period), a copy of the accounts required under the law of the place of the licensee's incorporation for the accounting period;
 - the licensee must include and identify in the accounts mentioned in paragraph (b) provision for meeting the licensee's accrued and contingent liability as at the end of the accounting period for claims made under the SRC Act in the accounting period.
18. If the licence includes the condition mentioned in paragraph (c) the Commission must also include a condition stating that:
- the provision mentioned in that paragraph must be consistent with a written evaluation, by an actuary, of the licensee's accrued and contingent liability for the accounting period; and
 - the evaluation mentioned in paragraph (a) must be lodged with the Commission.

Division 3.3—General

19. Division 3.3 applies to licences granted to both licensed corporations and licensed authorities.

Section 14 – Claims management

20. Section 14 provides that the Commission may only grant a licence that authorises a licensee, or a specified person acting on the licensee’s behalf, to manage some or all of the claims made by employees of the licensee under the SRC Act if the licence contains the condition that the licensee or specified person, in managing claims:
- must be guided by equity, good conscience and the substantial merits of the case, without regard to technicalities; and
 - is not required to conduct a hearing; and
 - is not bound by the rules of evidence.

Part 4—Criteria and procedures—suspension and revocation of licences

Section 15 – Revocation or suspension of licence at the instance of the Commission

21. Subsection 15(1) provides that the Commission may, under section 106 of the SRC Act, suspend or revoke a licence held by a Commonwealth authority.
22. Subsection 15(2) provides that the Commission may, under section 106 of the SRC Act, revoke, but not suspend, a licence held by a licensed corporation.
23. Subsection 15(3) provides that, if the Commission suspends or revokes a licence under section 106 of the SRC Act, it must give the licensee written notice:
- stating that the Commission has suspended or revoked the licence under section 106 of the SRC Act; and
 - stating the date of effect of the suspension or revocation; and
 - for notices relating to a suspension—stating the period for which the licence is suspended; and
 - setting out the reasons for the suspension or revocation.
24. Subsection 15(4) provides that, if the Commission revokes or suspends a licence under section 106 of the SRC Act, it must publish a notice in the *Gazette*, or by notifiable instrument:
- stating that the licence has been suspended or revoked under section 106 of the SRC Act; and
 - stating the date of effect of the suspension or revocation; and
 - for a notice relating to a suspension—stating the period of suspension.

Section 16 – Suspected breach of condition

25. Section 16 provides that, for the purposes of subsection 106(2) of the SRC Act, if the Commission believes, on reasonable grounds, that a licensee may have breached a condition to which the grant of the licence is subject, the Commission may give a written notice to the licensee:

- stating that the Commission believes that the licensee may have breached a condition of its licence; and
 - giving details of the matters that the Commission considers may constitute the breach; and
 - stating that if the Commission is satisfied that a breach has occurred, the Commission may:
 - if the licensee is a Commonwealth authority—suspend or revoke the licence; or
 - if the licensee is a licensed corporation—revoke the licence; and
 - inviting the licensee to make written submissions in relation to the matter to the Commission, within 30 days after receiving the notice.
26. Subsection 16(3) makes clear that, if the licensee makes a submission within the period mentioned in paragraph (d), the Commission must consider the submission.

Section 17 – Revocation of licence at the request of licensee

27. Subsection 17(1) provides that, if the Commission revokes a licence under section 107 of the SRC Act, it must give the licensee a notice in writing, stating:
- that the Commission has revoked the licence under section 107 of the SRC Act; and
 - the date of effect of the revocation.
28. Subsection 17(2) provides that the Commission must publish the notice in the *Gazette* or by notifiable instrument.

Part 5—Notices

29. Part 5 sets out the Commission’s notice and publication requirements that are not covered elsewhere in the Directions.
30. The Commission also has notice or publication requirements under sections 8, 15, 16 and 17 of the Directions.

Section 18 – Variation of scope of licence or extension of term of licence

31. Subsection 18(1) provides that if the Commission varies the scope of a licence or extends the term of a licence, it must publish a notice in the *Gazette*, or by notifiable instrument, setting out the variation made to the scope of the licence or the extension of the term of the licence.
32. The Commission may vary the scope of a licence, or extend the term of a licence, under subsection 105(1) of the SRC Act.
33. Subsection 18(2) provides that if the Commission varies the scope of a preserved licence, it must publish a notice in the *Gazette*, or by notifiable instrument, setting out the variation made to the scope of the preserved licence.
34. The Commission may vary the scope of a preserved licence under sections 22 or 28 of the 2019 Regulations.

Section 19 – Variation of conditions

35. Section 19 provides that, if under subsection 108D(2) of the SRC Act, the Commission varies a condition to which the grant of a licence or preserved licence is
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subject, it must publish a notice in the *Gazette*, or by notifiable instrument, setting out the variation made to the condition.

36. The Commission may vary a condition of a licence under subsection 108D(2) of the SRC Act or under sections 22 or 28 of the 2019 Regulations.

Part 6—Recordkeeping and reporting

Section 20 – Commission must keep records

37. Section 20 provides that the Commission must keep records of the following:
- applications for licences;
 - refusals to grant licences;
 - grants of licences, including the scope of the licences and the conditions to which the licences are subject;
 - expiry of licences;
 - suspensions of licences;
 - revocations of licences;
 - breaches of licences and preserved licences; and
 - suspected breaches of licence and preserved licences.

Section 21 – Reporting

38. Section 21 provides that the Commission must include details of the records mentioned in section 20, apart from suspected breaches of licence and preserved licences, for a financial year in the Commission’s annual report for that financial year under section 89S of the SRC Act.

Schedule 1—Repeals

39. Schedule 1 to the Directions repeals the *Safety, Rehabilitation and Compensation Directions 2002*.