

## EXPLANATORY STATEMENT

### *Safety, Rehabilitation and Compensation (Defence-related Claims) (Specification in Relation to Definition of Specified Number) Instrument 2019*

#### EMPOWERING PROVISION

Subsection 30(4) of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (the DRCA).

#### PURPOSE

The attached instrument (M94 of 2018) specifies a number for the formula in section 30 of the DRCA to be used for calculating the amount of a lump sum redemption of weekly compensation payments. The number specified is 0.03.

The attached instrument replaces the *Safety, Rehabilitation and Compensation Act 1988 – Notice Specifying a Number for Redemption of Compensation, No R1 of 1994* (F2009B00113) (the SRCA notice) made under section 30 of the *Safety, Rehabilitation and Compensation Act 1988* (the SRCA). The specified number in the SRCA notice is 0.03 and the notice is due to sunset on 1 April 2019.

The SRCA notice was carried over as a legislative instrument in force under the DRCA by virtue of transitional provisions in the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017*. That Act created the DRCA as a re-enacted version of the *Safety, Rehabilitation and Compensation Act 1988* modified to apply only to members of the Defence Force and their dependants.

The DRCA commenced on 12 October 2017. It provides a rehabilitation, treatment and compensation regime for members of the Defence Force in respect of injuries arising from service between 1 December 1988 and 1 July 2004.

The Department of Veterans' Affairs (DVA) has reviewed the SRCA notice and found it to be required. Accordingly, the attached instrument is being remade under section 30 of the DRCA. DVA proposes no change to the specified number in the remade instrument, keeping it at 0.03. The specified number remains broadly consistent with the average annual 10 year bond rate over the past 12 months, which approximates the amount of interest that can be earned on a lump sum. The lump sum payments are discounted in recognition that the lump sum can be invested and earn interest.

Section 30 of the DRCA provides for the conversion of small amounts of weekly incapacity payments into a lump sum payment. Under the DRCA, if a client is receiving incapacity payments less than an indexed ceiling amount and the degree of their incapacity is unlikely to change, the client may be offered a lump sum. The intention of section 30 of the DRCA is to reduce the cost to the Commonwealth of administering incapacity payments and to provide a person with the benefit of access to a lump sum rather than a relatively small weekly benefit.

The formula contained in subsection 30(2) of the DRCA uses the specified number in the calculation. The specified number means the number specified in writing by the Minister under subsection 30(4) of the DRCA. Subsection 30(4) of the DRCA allows

the Minister to specify, by legislative instrument, a number in decimal notation for the purposes of subsection 30(2) of the DRCA.

The specified number under the SRCA notice to be remade by the Department of Jobs will also remain at 0.03. Section 138 of the *Military Rehabilitation and Compensation Act 2004* (the MRCA) also provides for the conversion of small amounts of weekly incapacity payments into a lump sum payment. Section 138 of the MRCA contains the same formula as section 30 of the DRCA and section 30 of the SRCA. The specified number under the corresponding MRCA instrument is also 0.03.

The attached instrument will commence on 1 April 2019.

## **CONSULTATION**

Consultation was undertaken with the Department of Jobs and Small Business. That Department is revoking and remaking the SRCA Notice which sunsets on 1 April 2019. The remade instrument will not change the specified number in the instrument it replaces.

The attached instrument specifies the same number. Accordingly it was considered consultation with clients in respect of the attached instrument was not necessary. Further, consultation was considered unnecessary because of the technical nature of the matter covered by the instrument in that the instrument contains a specified number that is used in a formula to calculate a lump sum amount. The instrument does not disadvantage any person.

## **RETROSPECTIVITY**

None.

## **DOCUMENTS INCORPORATED BY REFERENCE**

No.

## **REGULATORY IMPACT**

None.

## **HUMAN RIGHTS STATEMENT**

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

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’

*Overview*

The *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) provides support for clients 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 DRCA provides clients with the benefit of a lump sum payment of their incapacity entitlements when their weekly payments are less than a threshold amount.

Section 30 of the DRCA provides for the conversion of small amounts of weekly incapacity payments into a lump sum payment. Where a client is receiving incapacity payments less than an indexed ceiling amount and the degree of their incapacity is unlikely to change, the client may be offered a lump sum.

The amount of lump sum payable under subsection 30(1) of the DRCA is calculated using the formula prescribed by subsection 30(2) of the DRCA. The formula contained in subsection 30(2) of the DRCA uses the specified number in the calculation. The specified number means the number specified in writing by the Minister under subsection 30(4) of the DRCA. Subsection 30(4) of the DRCA allows the Minister to specify, by legislative instrument, a number in decimal notation for the purposes of subsection 30(2) of the DRCA.

#### *Conclusion*

This legislative instrument is compatible with human rights as it ensures that a client who has an injury resulting in an incapacity for work may be paid a lump sum under the DRCA, rather than receiving small weekly payments.

Accordingly, the attached instrument is considered to be “human rights compatible”.

Darren Chester  
Minister for Veterans’ Affairs  
Rule-Maker

#### **FURTHER EXPLANATION OF PROVISIONS**

See: [Attachment A](#)

**Safety, Rehabilitation and Compensation (Defence-related Claims) (Specification in relation to Definition of Specified Number) Instrument 2019**

Section 1

This section provides that the name of the instrument is the *Safety, Rehabilitation and Compensation (Defence-related Claims) (Specification in relation to Definition of Specified Number) Instrument 2019*.

Section 2

This is the commencement provision and it provides for the instrument to commence on 1 April 2019.

Section 3

This section sets out the primary legislation that authorises the making of the instrument, namely subsection 30(4) of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

Section 4

This section repeals the *Safety, Rehabilitation and Compensation Act 1988 – Notice Specifying a Number for Redemption of Compensation, No R1 of 1994* in force for the purposes of the DRCA.

The note to the section advises that the *Safety, Rehabilitation and Compensation Act 1988 – Notice Specifying a Number for Redemption of Compensation, No R1 of 1994* was in force for the purposes of the DRCA because of item 63 of Schedule 1 to the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017*.

This instrument will have no impact on the *Safety, Rehabilitation and Compensation Act 1988 – Notice Specifying a Number for Redemption of Compensation, No R1 of 1994* in force under the *Safety, Rehabilitation and Compensation Act 1988* (the SRCA Notice). The SRCA notice will continue in force until its sunset date of 1 April 2019 or until earlier repealed.

The authority for this repeal provision is subsection 33(3) of the *Acts Interpretation Act 1901*.

## Section 5

This section provides that the purposes of the definition of *specified number* in subsection 30(3) of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*, the number 0.03 is specified.