

EXPLANATORY STATEMENT

Issued by Comcare

Notice of a Disallowable Instrument

Safety, Rehabilitation and Compensation Act 1988 (the Act)

Guidelines for Rehabilitation Authorities 2019 (the Guidelines)

Authority

Under subsection 41(1) of the Act, Comcare may prepare and issue guidelines to rehabilitation authorities in relation to the performance or exercise of their functions or powers.

Purpose

Part III of the Act sets out the powers and functions of a rehabilitation authority. Subsection 41(2) provides that rehabilitation authorities must comply with any guidelines issued.

The Guidelines include the mandatory requirements for rehabilitation authorities in the performance and exercise of those powers and functions. This allows rehabilitation authorities to tailor rehabilitation practices specifically for each employee to achieve an early and durable recovery at or return to work (RTW), following a compensable injury.

The Guidelines also promote communication and consultation between rehabilitation authorities and employees.

These Guidelines are a legislative instrument for the purposes of the *Legislation Act 2003 (the LA)*. Details of the provisions of the instrument are in Attachment A.

Consultation

Before the instrument was made, Comcare was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

On 3 December 2018, Comcare published a draft of the Guidelines, together with an accompanying guidance note, on its website. These were also provided directly to key stakeholders such as Commonwealth authorities, licensed self-insurers, employee representatives, and workplace rehabilitation providers.

Consultation closed on 1 February 2019 and Comcare received 23 submissions. Comcare considered these submissions in the finalisation of the Guidelines.

Regulatory Impact Assessment

The Office of Better Practice Regulation advised that this instrument does not require a Regulatory Impact Statement (RIS) (OBPR ID number 23293).

Statement of Compatibility with Human Rights

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

Guidelines for Rehabilitation Authorities 2019

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* (**the HR Act**) requires a statement of compatibility with human rights to be prepared in relation to this legislative instrument and paragraph 15J(2)(f) of the LA requires that it be included in the explanatory statement.

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the HR Act.

Overview of the legislative instrument

These Guidelines are made under subsection 41(1) of the *Safety, Rehabilitation and Compensation Act 1988* (**the SRC Act**).

The Guidelines include the mandatory requirements for rehabilitation authorities in the performance and exercise of those powers and functions. This allows rehabilitation authorities to tailor rehabilitation practices specifically for each employee to achieve an early and durable recovery at work or RTW, following a compensable injury.

Subsection 41(2) of the SRC Act provides that rehabilitation authorities must comply with these Guidelines once issued.

Human rights implications

Comcare has assessed whether the instrument is compatible with the human rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the HR Act as they apply to Australia.

The Guidelines provide transparent direction to employers, rehabilitation authorities, their delegates and employees in the management practices required to assist employees in their recovery at or RTW. The Guidelines specifically require that the employee be informed of and participate in each stage of the rehabilitation process. Comcare considers the Guidelines accord with General Comment 19 by the Committee on Economic, Social and Cultural Rights on Article 9, that “State parties should provide social services for rehabilitation of the injured and persons with disabilities...”.¹

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, Comcare has formed the view that the instrument promotes human rights and does not impinge on any rights or freedoms.

Conclusion

This instrument is compatible with human rights because it promotes the protection of human rights and does not limit any human rights or freedoms.

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].

Attachment A

Explanation of Provisions

Section 1 states the name of the Guidelines.

Section 2 states that the Guidelines commence on 15 August 2019.

Section 3 states that the authority for making these Guidelines is section 41 of the SRC Act.

Section 4 provides the purpose of the Guidelines.

Section 5 defines terms used in the Guidelines.

Section 6 provides that each instrument that is specified in a Schedule to this instrument is amended or revoked as set out in the applicable items in that Schedule concerned, and any other item in that Schedule to this instrument has effect according to its terms.

Section 7 imposes conditions on a rehabilitation authority where it has delegated its powers and functions under Part III of the SRC Act. This section emphasises that oversight of rehabilitation performance remains with senior management of the rehabilitation authority and its principal officer. It provides assurance that delegates have the capability and support to perform their delegated functions.

Section 8 addresses rehabilitation assessments. The rehabilitation authority may at any time ascertain the need for a rehabilitation program through a rehabilitation assessment, but it is not always necessary. However, if an employee requests an assessment in writing, this must be arranged.

This section highlights that the rehabilitation authority can provide a rehabilitation program without first arranging an assessment under section 36 of the SRC Act. This promotes active and tailored case management.

Section 9 addresses rehabilitation programs. This section emphasises that the rehabilitation authority must have regard to all the factors in subsection 37(3) of the SRC Act and must identify those factors relevant to the program.

The section sets minimum inclusions for a rehabilitation program, whilst noting that a program can include a broad range of activities, such as finding suitable employment.

This section also sets an expectation that the rehabilitation authority will consult with employees and actively monitor the appropriateness of, or need for, a program based on the employee's individual circumstances.

Section 10 imposes duties on rehabilitation authorities when engaging workplace rehabilitation providers. This section supports the provision of quality rehabilitation services to employees and Comcare to respond to provider performance issues.

Section 11 addresses non-compliance in relation to employees undergoing an examination under subsection 36(3) or undertaking a rehabilitation program under section 37 of the SRC Act.

This section outlines the minimum requirements for considering employee non-compliance and determining the consequences or next steps.

Section 12 outlines transitional arrangements for rehabilitation assessments started prior to the commencement of this instrument. The purpose of the transitional provisions is to ensure a seamless transfer to the new Guidelines and minimise the disruption to an employee's rehabilitation.

Section 13 outlines transitional arrangements for rehabilitation programs started prior to the commencement of this instrument. The purpose of the transitional provisions is to ensure a seamless transfer to the new Guidelines and minimise the disruption to an employee's rehabilitation.

Schedule 1 revokes the *Guidelines for Rehabilitation Authorities 2012*.