

EXPLANATORY STATEMENT

Issued by Comcare

Notice of a Disallowable Instrument

Safety, Rehabilitation and Compensation Act 1988 (the Act)

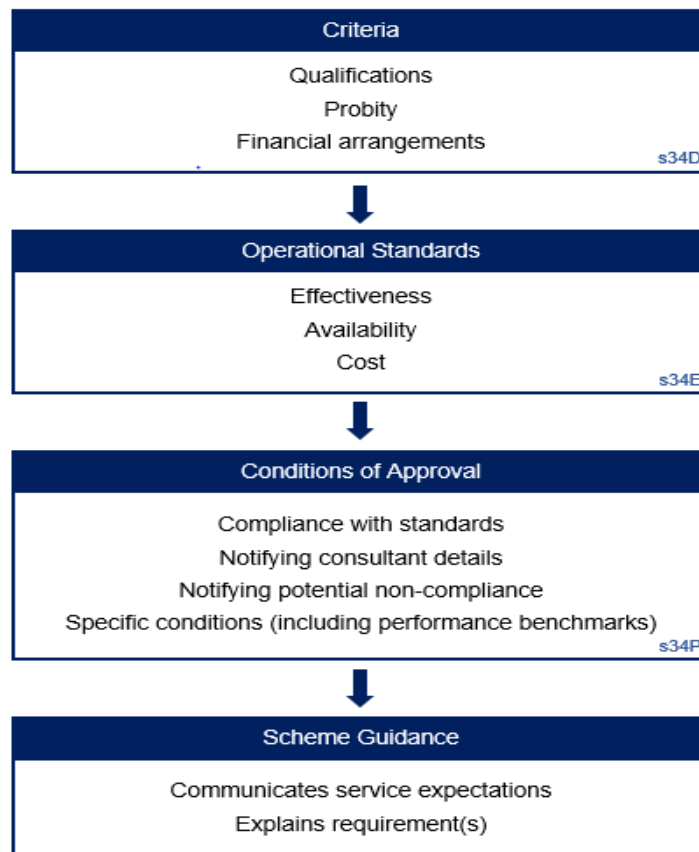
Operational Standards for Rehabilitation Program Providers 2019 (the Operational Standards)

Authority

Under section 34E of the Act, Comcare must determine the operational standards to be complied with by rehabilitation program providers approved under subsection 34F(1) of the Act.

Purpose

An employer under the Act has the responsibility and authority for providing rehabilitation and managing injured employees' return to work. Employers can refer an employee to a Comcare approved rehabilitation program provider to assist with the development and implementation of rehabilitation programs. Only providers approved by Comcare may be engaged to deliver services in the Comcare scheme.



Comcare's Workplace rehabilitation provider¹ approval framework is outcomes focussed and promotes an individualised approach to rehabilitation case management reducing unnecessary administrative burden for rehabilitation program providers.

The Criteria under section 34D *Safety, Rehabilitation and Compensation Act (Criteria for Approval and Renewal of Rehabilitation Program Providers) Determination 2020* are the mandatory requirements under which rehabilitation program providers are assessed for initial approval and renewal of approval by Comcare to operate within the scheme.

Comcare is also required under section 34E of the Act to set out the minimum standards to be achieved by approved rehabilitation program providers throughout the approval period. This instrument sets those minimum operational standards that relate to the effectiveness, availability and cost of service delivery.

The Operational Standards 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 1 August 2019, Comcare published a draft of the Operational Standards, together with the draft Criteria, draft Conditions of Approval and an accompanying guidance note, on its website. Key stakeholders were invited to provide comment including Comcare approved Workplace Rehabilitation Providers, the Australian Rehabilitation Providers Association, Rehabilitation Authorities (Australian Government Agencies and Licensees) and the Australian Council of Trade Unions.

Consultation closed on 19 August 2019 and Comcare received 6 responses that affirmed the approach taken with the revision of the instruments. The responses will also be used as an input to the supporting information published on the Criteria and Operational Standards.

Regulatory Impact Assessment

The Office of Better Practice Regulation advised that this instrument does not require a Regulatory Impact Statement (RIS) (OBPR ID number 25227).

¹ A reference to a 'workplace rehabilitation provider' has the same meaning as a 'rehabilitation program provider' as defined in the Act.

Attachment A

Explanation of Provisions

Section 1 states the name of the Operational Standards.

Section 2 states that the Operational Standards commence on 1 July 2020.

Section 3 states that the authority for making the Operational Standards is section 34E of the Act.

Section 4 defines terms used in the Operational Standards.

Section 5 repeals *The Criteria and Operational Standards for Workplace Rehabilitation Providers 2015*.

Section 6 specifies standards relating to effectiveness, availability and cost.

Effectiveness: That rehabilitation services must be generally effective in assisting an employee to continue to work or return to work, and the service must be effective to the greatest extent possible at ensuring that any return to work or continued work has minimum ongoing effects on the injury, is safe and particular to the employee and their injury and circumstances. This is to ensure an outcome focused and individualised approach to rehabilitation services.

Availability: That rehabilitation services must be suitably available, and that it involves implementing arrangements with a rehabilitation authority with a reasonable time, ensuring access to services are available to an employee within a reasonable period, and that any delays do not have an adverse effect on the employee. This is to ensure that approved rehabilitation providers are readily available and responsive to the needs of injured employees.

Cost: That the cost of the rehabilitation services must have a reasonable relationship to the value of the rehabilitation services. This will be considered in the context of the specific case, guidance published by Comcare and the market generally.

Section 7 specifies standards relating to governance, financial solvency, qualifications and practices of individuals.

Governance: Provides the mandatory governance requirements (eg: compliance with applicable laws) and gives approved program providers flexibility on how it implements compliance and manages its systems to ensure it is meeting the standards set out in the provision.

Financial solvency: Sets separate financial solvency standards for approved program providers who are individuals and those who are not individuals (eg: company).

Qualifications and practices of individuals: Provides that it is the responsibility of the approved program provider to ensure that any individual who provides rehabilitation services on its behalf is relevantly qualified (as defined in subsection 7(5), has appropriate professional experience and training, is aware of Comcare's guidance and policies, understand the approved provider's policies and practices and that the individual is compliant with relevant codes of professional ethics or practice.

Statement of Compatibility with Human Rights

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

Criteria for Approval and Renewal of Rehabilitation Program Providers 2020

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 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

This instrument is made under section 34E of the *Safety, Rehabilitation and Compensation Act 1988* (**the SRC Act**).

The purpose of the Instrument is to establish the minimum operational standards that an approved rehabilitation program provider under the SRC Act must continue to meet during the approval period. The operation standards include matters such as effectiveness, availability, cost, governance, solvency, qualifications and practices of individuals providing rehabilitation services.

This Legislative Instrument will affect:

- employees requiring rehabilitation services;
- individuals, partnerships and companies (and their employees) approved as rehabilitation program providers; and
- employers with rehabilitation obligations towards employees.

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 Instrument engages the following rights:

- the rights of people with disability;
- the right to work; and
- the right to privacy and reputation.

The rights of people with disability

The rights of people with disability are in the Convention of the Rights of Persons with Disabilities (CRPD). The CRPD rights engaged by the Instrument are Article 26 (habilitation and rehabilitation) and Article 27 (work and employment).

Article 26 requires countries to organise and strengthen habilitation and rehabilitation programmes for people with disability, particularly in health, employment, education and social services. Article 26(2) requires the promotion and development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

Article 27 establishes the right of persons with disabilities to work and includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work

environment that is open, inclusive and accessible to persons with disabilities. Article 27(1)(k) requires the promotion of vocational and professional rehabilitation, job retention and return to work programmes for persons with disabilities.

This Instrument is compatible with human rights because it advances the protection of rights for people with disability by encouraging rehabilitation and participation in the work force.

The Instruments sets several operational standards with which rehabilitation program providers must comply. These include standards for organisational and administrative management, quality assurance and continuous improvement; and principles for staff management and effective service delivery. This provides injured employees, including those with disabilities, with greater assurance of the quality of rehabilitation program providers approved by Comcare.

The right to work

The Instrument engages the right to work set out at Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which is the right of everyone to the opportunity to gain their living by work which they freely choose or accept.

The measures taken in the Instrument generally promote the right to work. The measure reinforces the principle that labour market participation of people with disability should be encouraged and supported, and therefore complements the advancement of the rights of people with disability.

The Instrument limits the right to work by placing standards on who can provide rehabilitation services. The limitation is for the legitimate objective of assuring the quality of workplace rehabilitation service providers. The measure is rationally connected to this objective as it requires rehabilitation program providers to meet the operational standards. The limitations are reasonable, necessary and proportionate as they are directly relevant to and necessary for the provision of professional and skilled workplace rehabilitation services of a high standard.

Privacy

Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR) prohibits unlawful or arbitrary interference with a person's privacy, family, home and correspondence. The right to privacy is not an absolute right, and limitations are permissible.

The Instrument engages the right to privacy because Comcare may collect personal information to assess compliance with the Instrument. The collected information includes the qualifications and experience of individuals employed or otherwise engaged by rehabilitation program providers. If the rehabilitation program provider is an individual the Instrument assessing compliance with the Instrument requires the collection of information relating to the individual's financial solvency.

The ability to collect information to assess compliance with the operational standards is reasonable, necessary and proportionate, as all personal information will be lawfully collected in accordance with *the Privacy Act 1988* (Cth), and it is reasonably necessary for and directly related to Comcare's functions and powers under Part III of the SRC Act. Comcare does not collect any unnecessary or sensitive personal information and all personal information collected is required for Comcare to perform its function in assessing rehabilitation program providers.

Conclusion

The Legislative Instrument is compatible with human rights because it promotes human rights, and to the extent that it may limit human rights those limitations are reasonable, necessary and proportionate.