

## EXPLANATORY STATEMENT

Issued by Comcare

Notice of a Disallowable Instrument

*Safety, Rehabilitation and Compensation Act 1988 (the Act)*

### ***Criteria for Approval and Renewal of Rehabilitation Program Providers 2020 (the Criteria)***

#### **Authority**

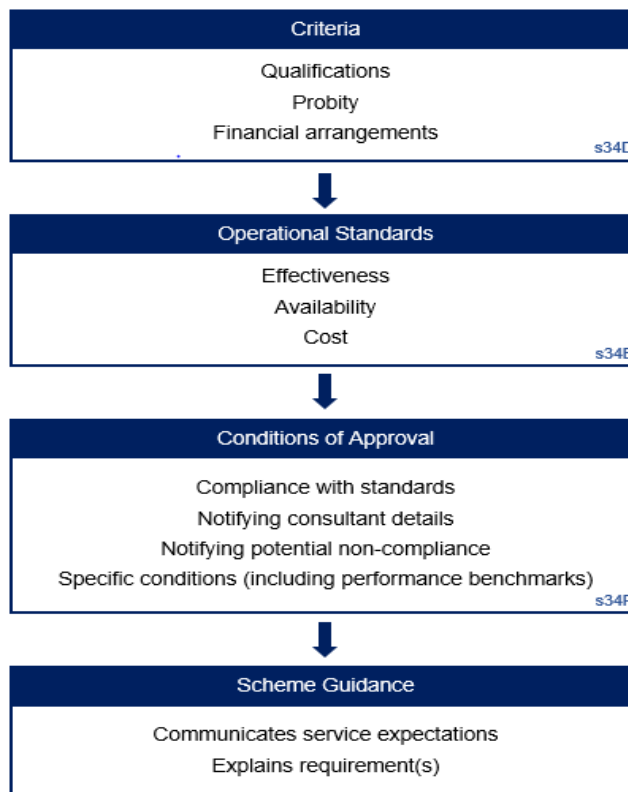
Under section 34D of the Act, Comcare must determine the criteria for approval and renewal of approval of rehabilitation program providers under sections 34B and 34J of the Act.

#### **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 is required under section 34D of the Act to set the criteria to approve and renew rehabilitation program providers. The Criteria forms part of Comcare's Workplace rehabilitation



provider<sup>1</sup> approval framework:

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

The Criteria sets out the mandatory requirements under which applicants are assessed for initial approval and renewal by Comcare to operate within the scheme. The Criteria relate to the applicant's qualifications, probity and financial arrangements.

The Criteria is 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 Criteria, together with the draft Operation Standards, draft Conditions of Approval and an accompanying guidance note, on its website. Comcare wrote to key stakeholder and invited them to provide comment. This included currently 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).

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<sup>1</sup>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 Criteria.

**Section 2** states that the Criteria commence on 1 January 2020.

**Section 3** states that the authority for making the Criteria is section 34D of the Act.

**Section 4** defines terms used in the Criteria.

**Section 5** repeals Division 1 of Part 2 Part 2 of the *Criteria and Operational Standards for Workplace Rehabilitation Providers 2015*.

**Section 6** specifies the qualifications required of an applicant for approval or renewal of approval as a rehabilitation program provider given a discrete qualification for workplace rehabilitation providers does not exist.

**Section 7** provides the matters that Comcare may have regard to, to assess whether the applicant's probity and financial arrangements are appropriate to be approved as a rehabilitation program provider.

**Section 8** specifies criteria that is relevant to renewal applications only in order to consider whether an approved program provider has provided a minimum number of services.

**Section 9** specifies the criteria for an applicant whose approval had previously been revoked under section 34Q of the Act. It requires that the applicant be able to meet its previous condition of approval. This is to ensure that actions have been taken to remedy the cause of any previous revocation.

## 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 34D of the *Safety, Rehabilitation and Compensation Act 1988* (**the SRC Act**).

The purpose of the Instrument is to establish the criteria that applicants must meet at the time of application for initial approval or renewal to provide workplace rehabilitation services under the SRC Act and continue to meet throughout the approval period. The criteria include matters relating to the qualifications, probity and financial arrangements of the applicant.

This Legislative Instrument will affect:

- employees requiring rehabilitation services;
- individuals, partnerships and companies (and their employees) applying to be 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 Instrument sets a number of criteria with which applicants must comply. These include criteria related to qualifications, probity and financial arrangements. This provides injured employees, including those with disabilities, with greater assurance of the quality of rehabilitation program providers approved by Comcare in accordance with the Instrument.

#### *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 restrictions on who can be approved to work as a workplace rehabilitation provider. The limitation is for the legitimate objective of providing assurance of the quality of workplace rehabilitation service providers. The measure is rationally connected to this objective as it requires that relevant qualifications be attained and maintained, and that the applicant be financially solvent. The limitations are reasonable, necessary and proportionate as they ensure consistency for applicants in the assessment of the Comcare approval process; and 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 consider applications 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 provider applicants.

#### **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.