

**SAFETY, REHABILITATION AND COMPENSATION (SPECIFIED RATE PER
KILOMETRE) INSTRUMENT 2019**

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General and Minister for Industrial Relations
under subsection 16(6) of the *Safety, Rehabilitation and Compensation Act 1988*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Safety, Rehabilitation and Compensation Act 1988* (the Act) establishes the Commonwealth workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations.

Where an employee suffers an injury in respect of which compensation is payable under the Act, subsection 16(1) of the Act provides that Comcare or a licensee (as the case may be) is liable to pay, in respect of the cost of medical treatment obtained in relation to the injury (being treatment that it was reasonable for the employee to obtain in the circumstances), compensation of such amount as Comcare or the licensee (as the case may be) determines is appropriate to that medical treatment.

If compensation is payable under subsection 16(1) of the Act in respect of the cost of medical treatment, and the employee reasonably incurs expenditure in making a necessary journey for the purpose of obtaining that medical treatment, subsection 16(6) of the Act provides that Comcare or the licensee (as the case may be) is liable to pay compensation to the employee for the journey, subject to subsection 16(7) of the Act.

The amount of compensation payable under subsection 16(6) of the Act is calculated using the formula: 'Specified rate per kilometre x Number of kilometres travelled'. The term *specified rate per kilometre* is defined in paragraph 16(6)(c) as the rate per kilometre that the Minister specifies, by legislative instrument, under subsection 16(6) in respect of journeys to which subsection 16(6) applies.

In this instrument, the Minister specifies a rate of \$0.68 per kilometre for the purposes of subsection 16(6) of the Act. This rate is derived from the tax deduction rate for work-related car expenses under the *Income Tax Assessment Act 1997*. The rate takes into account the Consumer Price Index for private motoring costs and reflects data from peak motoring bodies about the running cost of vehicles.

This instrument also repeals the *Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2008 (3)* (F2008L02335), which will sunset on 1 October 2019 by operation of the *Legislation Act 2003*, to avoid the possibility of concurrent operation of the two instruments.

To maintain a central record of the rates specified in previous years, Attachment B to this explanatory statement includes a list of all the rates specified by previous legislative instruments pursuant to subsection 16(6) of the Act. Attachment B does not form part of the specification made by the instrument.

CONSULTATION

The Attorney-General's Department (the department) consulted Comcare, licensees, and the Australian Council of Trade Unions in the development of this instrument. These stakeholders were invited to provide written feedback or comments on the specified rate. The feedback provided

generally supported the proposed rate. A private citizen also made representation to the department that the rate should be increased.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation was consulted regarding this instrument and indicated that a Regulation Impact Statement was not required (OBPR ID: 23963).

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

This instrument takes effect from the day after it is registered on the Federal Register of Legislation.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Instrument 2019

This legislative instrument is compatible with the human rights and freedoms recognised or declared by the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The *Safety, Rehabilitation and Compensation Act 1988* (the Act) establishes the Commonwealth workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations.

Where an employee suffers an injury in respect of which compensation is payable under the Act, subsection 16(1) of the Act provides that Comcare or a licensee (as the case may be) is liable to pay, in respect of the cost of medical treatment obtained in relation to the injury (being treatment that it was reasonable for the employee to obtain in the circumstances), compensation of such amount as Comcare or the licensee (as the case may be) determines is appropriate to that medical treatment.

If compensation is payable under subsection 16(1) of the Act in respect of the cost of medical treatment, and the employee reasonably incurs expenditure in making a necessary journey for the purpose of obtaining that medical treatment, subsection 16(6) of the Act provides that Comcare or the licensee (as the case may be) is liable to pay compensation to the employee for the journey, subject to subsection 16(7) of the Act.

The amount of compensation payable under subsection 16(6) of the Act is calculated using the formula: 'Specified rate per kilometre x Number of kilometres travelled'. The term *specified rate per kilometre* is defined in paragraph 16(6)(c) as the rate per kilometre that the Minister specifies, by legislative instrument, under subsection 16(6) in respect of journeys to which subsection 16(6) applies.

In this instrument, the Minister specifies a rate of \$0.68 per kilometre for the purposes of subsection 16(6) of the Act. This rate is derived from the tax deduction rate for work-related car expenses under the *Income Tax Assessment Act 1997*. The rate takes into account the Consumer Price Index for private motoring costs and reflects data from peak motoring bodies about the running cost of vehicles.

This instrument also repeals the *Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2008 (3)* (F2008L02335), which will sunset on 1 October 2019 by operation of the *Legislation Act 2003*, to avoid the possibility of concurrent operation of the two instruments.

Human rights implications

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 the ‘States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work’.¹ Workers’ compensation is analogous to social insurance in that it provides payment of wages and medical costs to employees for injuries occurring as a result of their employment.

The Act relevantly provides compensation in respect of the cost of reasonable medical treatment obtained by an employee. Compensation in respect of journeys undertaken for the purposes of obtaining medical treatment cannot be calculated without an instrument which sets out the ‘specified rate per kilometre’. This instrument positively engages the right to social security by enabling employees to be paid an appropriate amount of compensation in respect of the cost incurred by the employee in making a prescribed journey under the Act.

Conclusion

This legislative instrument promotes human rights by enabling compensation to be payable, and setting the rate at which that compensation is payable, in respect of compensable journeys prescribed by the Act.

The Hon Christian Porter MP

Attorney-General and Minister for Industrial Relations

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].

NOTES ON SECTIONS

Section 1 – Name

Section 1 provides that the title of the instrument is the *Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Instrument 2019*.

Section 2 – Commencement

Section 2 provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the instrument is made under subsection 16(6) of the *Safety, Rehabilitation and Compensation Act 1988*.

Section 4 – Definitions

Section 4 provides the definitions of terms used in the instrument.

Section 5 – Schedule

Section 5 provides that each instrument that is specified in the Schedule to the instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its term.

Section 6 – Specification

Section 6 provides that the specified rate per kilometre for the purposes of subsection 16(6) of the *Safety, Rehabilitation and Compensation Act 1988* is \$0.68.

Schedule 1 – Repeals

Schedule 1 to the instrument repeals the *Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2008 (3)* in its entirety.

Prior specifications

Prior to the commencement of this instrument, for the purposes of subsection 16(6) of the Act, the *specified rate per kilometre* for the period specified in column 1 of an item, was the rate specified in column 2 of that item by the instrument specified in column 3 of that item.

	Column 1	Column 2	Column 3
Item	Period	Specified rate per kilometre	Instrument
1	1 July 2008 to the day the <i>Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Instrument 2019</i> is registered on the Federal Register of Legislation	\$0.60	<i>Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2008 (3)</i> (F2008L02335)
2	1 October 2003 to 30 June 2008	\$0.47	Notice No. 18 of 2003 in Commonwealth Gazette No. GN 39 on 1 October 2003
3	1 July 2001 to 30 September 2003	\$0.42	Notice No 2 of 2001 in Commonwealth Gazette No. GN 26 on 4 July 2001
4	7 December 2000 to 30 June 2001	\$0.34	Notice No 1 of 2001 in Commonwealth Gazette No. GN 9 on 7 March 2001
5	8 November 2000 to 6 December 2000	\$0.34	Notice No 3 of 2000 in Commonwealth Gazette No. GN 44 on 8 November 2000
6	29 May 1995 to 7 November 2000	\$0.30	Notice No K1 of 1995 in Commonwealth Gazette No. S 199 on 30 May 1995
7	24 December 1992 to 28 May 1995	\$0.16	Notice No K1 of 1995 in Commonwealth Gazette No. S 199 on 30 May 1995