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

**EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General and Minister for Industrial Relations

under subsections 28(6A), 49(6B), 50(2B), 66(4B) and 83A(5) of the *Seafarers Rehabilitation and Compensation Act 1992*

**Purpose and operation of the Instrument**

The *Seafarers Rehabilitation and Compensation Act 1992* (the Act) provides workers’ compensation and rehabilitation arrangements for approximately 5000 seafarers in the Australian maritime industry. Pursuant to the Act, the employers of such seafarers are responsible for determining liability and paying compensation entitlements in accordance with the Act.

An employer is liable to pay an amount of compensation to an employee in respect of expenditure reasonably incurred by the employee when undertaking certain journeys, from the place in Australia where the employee is residing, in accordance with the following provisions of the Act:

* subsection 28(6) (which provides that, subject to subsection 28(7), if compensation is payable in respect of the cost of medical treatment under subsection 28(1), the employer is liable to pay to the employee an amount of compensation for expenditure reasonably incurred by the employee in making a journey for the purpose of obtaining such treatment);
* subsection 49(6A) (which provides that, subject to subsection 49(6D), an employer is liable to pay to the employee an amount of compensation for expenditure reasonably incurred by the employee in making a journey for the purpose of undergoing an examination required under subsection 49(3));
* subsection 50(2A) (which provides that, subject to subsection 50(2D), an employer is liable to pay to the employee an amount of compensation for expenditure reasonably incurred by the employee in making a journey for the purpose of undertaking a rehabilitation program provided pursuant to subsection 50(1));
* subsection 66(4) (which provides that, subject to subsection 66(4D), an employer who requires an employee to undergo an examination under subsection 66(1) is liable to pay to the employee an amount equal to the expenditure reasonably incurred by the employee in making the journey to attend the examination); and
* subsection 83A(3) (which provides that, subject to subsection 83A(7), an employer who requires an employee to undergo an examination under subsection 83A(1) is liable to pay to the employee an amount equal to the expenditure reasonably incurred by the employee in making the journey to attend the examination).

Where a journey referred to in one of the provisions above is made by means of private motor vehicle, the amount that an employer is liable to pay in respect of the journey is determined using the formula: ‘Specified rate per kilometre x Number of kilometres travelled’.

For the purposes of this formula, the ***specified rate per kilometre***means the rate per kilometre as the Minister specifies, by legislative instrument, under paragraphs 28(6A)(b), 49(6B)(b) and 50(2B)(b), and subsections 66(4B) and 83A(5), of the Act.

In this instrument, the Minister specifies that, for the purposes of paragraphs 28(6A)(b), 49(6B)(b) and 50(2B)(b), and subsections 66(4B) and 83A(5), of the Act, the ***specified rate per kilometre*** is $0.68. 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 *Seafarers Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2008 (1) (F2008L02333)*, 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 records the rate per kilometre specified by the Minister for the purposes of the Act in the periods prior to the commencement of this instrument. Attachment B does not form part of the specifications made by the instrument.

**CONSULTATION**

The Attorney-General’s Department consulted the Maritime Union of Australia (MUA), Maritime Industry Australia Limited (MIAL), the Australian Maritime Officers Union (AMOU), the Australian Institute of Marine and Power Engineers (AIMPE), the Australian Mines and Metals Association (AMMA), the Australian Council of Trade Unions (ACTU) and the Seafarers, Safety Rehabilitation and Compensation Authority (Seacare Authority) in the development of this instrument. These stakeholders were invited to provide written feedback or comments on the specified rate. AIMPE and the members of the Seacare Authority who responded did not raise any objections to this instrument. MIAL supports aligning the entitlements for seafarers with those received by the rest of the Australian community, however opposes an increase which is independent of holistic Seacare scheme reform.

**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.

S**TATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

**Seafarers 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 *Seafarers Rehabilitation and Compensation Act 1992* (the Act) provides workers’ compensation and rehabilitation arrangements for approximately 5000 seafarers in the Australian maritime industry. Pursuant to the Act, the employers of such seafarers are responsible for determining liability and paying compensation entitlements in accordance with the Act.

Pursuant to sections 28, 49, 50, 66 and 83A of the Act, an employer is liable to pay an amount to an employee in respect of expenditure reasonably incurred by the employee in undertaking certain journeys in accordance with those provisions.

Where a journey referred to in one of these sections is made by means of private motor vehicle, the amount that an employer is liable to pay in respect of the journey is determined using the formula: ‘Specified rate per kilometre x Number of kilometres travelled’.

For the purposes of this formula, the ***specified rate per kilometre***means the rate per kilometre as the Minister specifies by legislative instrument.

In this instrument, the Minister specifies that, for the purposes of paragraphs 28(6A)(b), 49(6B)(b) and 50(2B)(b), and subsections 66(4B) and 83A(5), of the Act, the ***specified rate per kilometre*** is $0.68.

This instrument also repeals the *Seafarers Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2008 (1) (F2008L02333)*, 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]](#footnote-1)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 that compensation in respect of journeys undertaken for the purpose of obtaining medical treatment, undertaking a rehabilitation program or undergoing an examination 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

**Attachment A**

**NOTES ON SECTIONS**

**Section 1 – Name**

Section 1 provides that the title of the instrument is the *Seafarers 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 subsections 28(6A), 49(6B), 50(2B), 66(4B) and 83A(5) of the *Seafarers Rehabilitation and Compensation Act 1992*.

**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 paragraphs 28(6A)(b), 49(6B)(b) and 50(2B)(b), and subsections 66(4B) and 83A(5), of the *Seafarers Rehabilitation and Compensation Act 1992* is $0.68.

**Schedule 1 – Repeals**

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

**Attachment B**

Prior specifications

Prior to the commencement of this instrument, the ***specified rate per kilometre*** for the purposes of the provisions in column 2 of an item, was the rate specified in column 3 of that item, by the instrument or notice specified in column 4 of that item, for the period specified in column 1 of that item.

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|  | Column 1 | Column 2 | Column 3 | Column 4 |
| Item | Period | Provisions | Specified rate per kilometre | Instrument/Notice |
|  | 1 July 2008 to the day the *Seafarers Rehabilitation and Compensation (Specified Rate per Kilometre) Instrument 2019* is registered on the Federal Register of Legislation | 28(6A)(b), 49(6B)(b), 50(2B)(b), 66(4B) and 83A(5) | $0.60 | *Seafarers Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2008 (1)* (F2008L02333) |
|  | 19 December 2005 to 30 June 2008 | 28(6A)(b), 49(6B)(b), 50(2B)(b), 66(4B) and 83A(5) | $0.47 | *Seafarers Rehabilitation and Compensation (Specified Rate per Kilometre) Notice 2005 (1)* (F2005L04065) |
|  | 10 March 2004 to 18 December 2005 | 28(6A)(b), 49(6B)(b), 50(2B)(b), 66(4B) and 83A(5) | $0.47 | Notice No 01/2004 – Change to Mileage Rate in Commonwealth Gazette No. GN 10 on 10 March 2004 |
|  | 1 July 2002 to 9 March 2004 | 28(6A)(b), 49(6B)(b), 50(2B)(b), 66(4B) and 83A(5) | $0.42 | Notice No 02/2002 – Advice on Mileage Rate |
|  | 1 July 2001 to 30 June 2002 | 28(6A)(b), 49(6B)(b), 50(2B)(b), 66(4B) and 83A(5) | $0.42 | Notice No 05/2001 – Change to Mileage Rate |
|  | 17 January 2001 to 30 June 2001 | 28(6A)(b), 49(6B)(b), 50(2B)(b), 66(4B) and 83A(5) | $0.34 | Notice No 01/2001 – Change to Mileage Rate in Commonwealth Gazette No. GN 2 on 17 January 2001 |
|  | 1 July 1997 to 16 January 2001 | 66(4B) and 83A(5) | $0.30 | Seacare Authority Notice No. 1 of 1997 in Commonwealth Gazette No. GN 24 on 18 June 1997 |
|  | 1 July 1995 to 30 June 1997 | 28, 29 and 50 | $0.30 | Notice No 4/1995 – Rate of Travel Allowance for Private Vehicles Used By Seafarers for Rehabilitation and Compensation Related Journeys |

1. 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]. [↑](#footnote-ref-1)