

**SAFETY, REHABILITATION AND COMPENSATION (LICENCE ELIGIBILITY—
HEALTHSCOPE OPERATIONS PTY LTD) AMENDMENT INSTRUMENT 2022**

EXPLANATORY STATEMENT

Issued by authority of the Minister for Industrial Relations
under section 100 of the *Safety, Rehabilitation and Compensation Act 1988*

PURPOSE AND OPERATION OF THE INSTRUMENT

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

Under Part VIII of the SRC Act, an 'eligible corporation' may apply to the Safety, Rehabilitation and Compensation Commission ('the Commission') for a licence to:

- (a) accept liability to pay workers' compensation in respect of its employees in accordance with the SRC Act; and
- (b) manage the claims of its employees in accordance with the SRC Act.

An 'eligible corporation' is a corporation that has been declared to be such by the Minister for Industrial Relations under subsection 100(1) of the SRC Act. Subsection 100(1) of the SRC Act provides that, if the Minister is satisfied that it would be desirable for the SRC Act to apply to employees of a corporation that:

- (a) is, but is about to cease to be, a Commonwealth authority; or
- (b) was previously a Commonwealth authority; or
- (c) is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority;

the Minister may, by legislative instrument, declare the corporation to be eligible to be granted a licence under Part VIII of the SRC Act.

The Minister made such a declaration in respect of Healthscope Operations Pty Ltd (ACN 006 405 152; ABN 85 006 405 152) ('Healthscope Operations'): *Safety, Rehabilitation and Compensation (Licence Eligibility—Healthscope Operations Pty Ltd) Declaration 2019* ('2019 Declaration'), which relevantly provided the period in which Healthscope Operations is able to submit an application for, and to be eligible to be granted, a licence under Part VIII of the SRC Act, was 24 months after the day on which the declaration commenced.

The 2019 Declaration was amended by the *Safety, Rehabilitation and Compensation (Licence Eligibility – Healthscope Operations Pty Ltd Amendment Instrument 2021* ('2021 Amendment') to extend that period to 48 months from the date of commencement.

This instrument further extends the period in which Healthscope Operations is able to submit an application for, and to be eligible to be granted, a licence under Part VIII of the SRC Act to 60 months, to account for the ongoing COVID-19 pandemic and the significant pressures it has placed on Healthscope Operations as a provider in the healthcare industry. The effect is that Healthscope Operations will remain eligible to be granted a licence by the Commission until 5 April 2024, as the 2019 Declaration will now self-repeal on 6 April 2024 instead of 6 April 2023.

Subsection 33(3) of the *Acts Interpretations Act 1901* provides the power to make a legislative instrument includes the power to vary the instrument.

Pursuant to subsection 100(1) of the SRC Act, the Minister is satisfied that:

- (i) Healthscope Operations continues to be a corporation carrying on business in competition with current or former Commonwealth authorities, being the Australian Capital Territory and;
- (ii) it remains desirable for the SRC Act to apply to the employees of Healthscope Operations.

CONSULTATION

This instrument was made at the request of Healthscope Operations and in consultation with Comcare and Healthscope Operations. Wider consultation was not required as the effect of the instrument is to allow Healthscope Operations further time in which to make an application for the grant of a licence. Any application for a grant of a licence will be made by Healthscope Operations to the Commission under section 102 of the SRC Act.

The Commission, which will decide whether to grant the licence, includes a Chairperson; a member who represents the Commonwealth and Commonwealth authorities; three members nominated by the Australian Council of Trade Unions; a member who, in the Minister's opinion, represents licensees; the Chief Executive Officer of Safe Work Australia; a member who represents the interests of the Australian Capital Territory's public sector employees and two members with qualifications or experience relevant to the Commission's functions, or the exercise of its powers.

The Office of Best Practice Regulation was consulted regarding instruments made under section 100 of the SRC Act and has indicated that a Regulation Impact Statement is not required for these instruments (OBPR ID: 23425).

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

This instrument commences 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 (Licence Eligibility—Healthscope Operations Pty Ltd) Amendment Instrument 2022

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* (SRC Act) establishes the Commonwealth workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations.

Under Part VIII of the SRC Act, an 'eligible corporation' may apply to the Safety, Rehabilitation and Compensation Commission ('the Commission') for a licence to:

- (a) accept liability to pay workers' compensation in respect of its employees in accordance with the SRC Act; and
- (b) manage the claims of its employees in accordance with the SRC Act.

An ‘eligible corporation’ is a corporation that has been declared to be such by the Minister for Industrial Relations under subsection 100(1) of the SRC Act. Subsection 100(1) of the SRC Act provides that, if the Minister is satisfied that it would be desirable for the Act to apply to employees of a corporation that:

- (a) is, but is about to cease to be, a Commonwealth authority; or
- (b) was previously a Commonwealth authority; or
- (c) is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority;

the Minister may, by legislative instrument, declare the corporation to be eligible to be granted a licence under Part VIII of the SRC Act.

The Minister made such a declaration in respect of Healthscope Operations Pty Ltd (ACN 006 405 152; ABN 85 006 405 152) (‘Healthscope Operations’): *Safety, Rehabilitation and Compensation (Licence Eligibility—Healthscope Operations Pty Ltd) Declaration 2019* (‘2019 Declaration’).

The 2019 Declaration was amended by the *Safety, Rehabilitation and Compensation (Licence Eligibility – Healthscope Operations Pty Ltd Amendment Instrument 2021* to extend that period to 48 months from the date of commencement.

This instrument further amends the 2019 Declaration to extend the period in which Healthscope Operations is able to submit an application for, and to be eligible to be granted, a licence under Part VIII of the SRC Act, to account for the wide ranging disruptions caused by the COVID-19 pandemic. The effect is that Healthscope Operations will remain eligible to be granted a licence by the Commission until 5 April 2024, as the 2019 Declaration will now self-repeal on 6 April 2024.

Pursuant to subsection 100(1) of the SRC Act, the Minister is satisfied that:

- (i) Healthscope Operations continues to be a corporation carrying on business in competition with current or former Commonwealth authorities, being the Australian Capital Territory and;
- (ii) it remains desirable for the SRC Act to apply to the employees of Healthscope Operations.

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.

If Healthscope Operations makes an application for the grant of a licence to the Commission under section 102 of the Act, the Commission may grant the licence. In order to grant Healthscope Operations a licence, the Commission will be required to consider if it is appropriate to grant Healthscope Operations a licence. To be satisfied that it is appropriate to grant Healthscope Operations a licence, the Commission must be satisfied, among other things, that Healthscope Operations has sufficient resources to fulfil the responsibilities imposed on it under the licence, has the capacity to meet the Commission’s standards for the rehabilitation and work health and safety of Healthscope Operations employees, and that the grant of the licence will not be contrary to the interests of Healthscope Operations employees (section 104 of the SRC Act).

This declaration engages but does not limit human rights. Its effect is that it extends the period in which Healthscope Operations may make an application for the grant of a licence, to be considered by the Commission. As a result, making the declaration does not affect the workers’ compensation rights of Healthscope Operations employees and so does not limit the right to social security.

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].

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

Senator the Hon Michaelia Cash

Minister for Industrial Relations

NOTES ON SECTIONS

Section 1 – Name

Section 1 provides that the title of the instrument is the *Safety, Rehabilitation and Compensation (Licence Eligibility—Healthscope Operations Pty Ltd) Amendment Instrument 2022*.

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 section 100 of the *Safety, Rehabilitation and Compensation Act 1988*.

Section 4 – Schedule

Section 4 provides that each instrument that is specified in Schedule 1 to the instrument is amended or repealed as set out in the applicable items in that Schedule and any other item in the Schedule to the instrument has effect according to its terms.

Schedule 1 - Amendments

Schedule 1 to the instrument amends the *Safety, Rehabilitation and Compensation (Licence Eligibility—Healthscope Operations Pty Ltd) Declaration 2019* to extend the date of automatic repeal of that Declaration from 48 months to 60 months from the date of commencement of that Declaration.