

**SAFETY, REHABILITATION AND COMPENSATION DIRECTIONS**  
**AMENDMENT INSTRUMENT 2022**

**EXPLANATORY STATEMENT**

Issued by authority of the Minister for Industrial Relations

under sections 89D and 101 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.

The Safety, Rehabilitation and Compensation Commission (the Commission) is established by the SRC Act. The Commission has a number of functions and powers under the SRC Act, including the granting of licences to eligible applicants under Part VIII of the Act.

Pursuant to section 89D of the SRC Act, the Minister may give a direction to the Commission with respect to the performance of its functions and the exercise of its powers under the SRC Act. Section 101 of the SRC Act provides that the Minister's power to give directions to the Commission under section 89D of the SRC Act extends to directions concerning any matter relating to the grant of licences under Part VIII of the Act.

On and from 28 March 2019, the Commission has been subject to the Ministerial directions contained in the *Safety, Rehabilitation and Compensation Directions 2019* (the 2019 Directions) which repealed and substantially replicated the *Safety, Rehabilitation and Compensation Directions 2002*, subject to a number of updates to reflect the commencement of the *Safety, Rehabilitation and Compensation Regulations 2019*.

This instrument amends the 2019 Directions to introduce new directions relating to the exercise of the Commission's powers to authorise a Commonwealth authority to accept liability in respect of injury, loss, damage or death occurring before the commencement of a licence under Part VIII of the SRC Act. The instrument provides that the Commission must not authorise a Commonwealth authority to accept such liability unless the Commission has provided prior written notification to the Minister of:

- (a) the extent to which the Commonwealth authority would be authorised to accept liability under the Act in relation to injury, loss, damage or death that has occurred prior to the commencement of the licence; and
- (b) the estimated amount of outstanding tail liability that would be assumed by the Commonwealth authority

under the proposed licence, or licence variation.

The instrument also provides that, for the purposes of the 2019 Directions, outstanding tail liability means the indicative value of outstanding claim liabilities arising under the Act in relation to injury, loss, damage, or death suffered by employees of a Commonwealth authority in the period prior to the commencement of a licence during which the Commonwealth authority paid an annual premium

under the Act, calculated by Comcare as at the date upon which the Commonwealth authority will, or proposes to, assume such liability.

## **CONSULTATION**

Consultation was undertaken with Comcare and the Commission. For the consultation, Comcare and the Commission were provided with a draft version of this instrument, and were invited to provide feedback. Where appropriate, feedback received during the consultation process has been incorporated into the instrument

## **REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation was consulted regarding this instrument and indicated that a Regulatory Impact Statement was not required (OBPR22-01976).

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

The Declaration takes effect on 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 Directions Amendment Instrument 2022**

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

### **Overview of the Legislative Instrument**

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The Safety, Rehabilitation and Compensation Commission (the Commission) is established by the SRC Act. The Commission has a number of functions and powers under the SRC Act, including the granting of licences to eligible applicants under Part VIII of the Act.

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### **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 sets out the essential elements of the right to social security, including that 'States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work'.<sup>1</sup>

Workers' compensation legislation ensures the protection of injured workers by way of compensation payments, payment of medical expenses, permanent impairment benefits and other benefits, such as access to rehabilitation support.

The instrument engages but does not limit human rights. Its effect is to direct the Commission to give written notice to the Minister (of the matters specified in the instrument) prior to exercising its power to authorise a Commonwealth authority to accept liability in respect of injury, loss, damage or death occurring before the commencement of a licence under Part VIII of the SRC Act. Accordingly, the instrument does not alter the workers' compensation rights, entitlements or obligations of employees and so does not limit the right to social security.

### **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

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<sup>1</sup> 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 Directions 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 sections 89D and 101 of the *Safety, Rehabilitation and Compensation Act 1988*.

### **Section 4 – Definitions**

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

### **Section 5 – Schedules**

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

### **Schedule 1 – Amendments**

Schedule 1 to the instrument amends the *Safety, Rehabilitation and Compensation Directions 2019* as specified in the schedule.