

**SAFETY, REHABILITATION AND COMPENSATION**  
**(97E(1) – PREMIUM DETERMINATION) GUIDELINES 2022**

**EXPLANATORY STATEMENT**

Approved by the Safety, Rehabilitation and Compensation Commission

**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.

Comcare administers the workers' compensation scheme established under the SRC Act. As part of this role, Comcare collects premiums from the Entities and Commonwealth authorities whose employees are covered by the scheme. Premiums are not payable by licensed self-insurers. A premium is the amount an agency is required to pay Comcare for workers' compensation insurance. Premiums are based on the general trends in the premium pool and the individual agency's claim performance. Comcare calculates the premiums and its methodology is available on its website.

The SRC Act also establishes the Safety Rehabilitation and Compensation Commission (Commission). The Commission administers various regulatory functions under the SRC Act, and is the issuing authority and regulator of self-insurance licences under the SRC Act.

Section 97 of the SRC Act provides that Comcare must determine the premium to be paid by each Entity and Commonwealth authority for each financial year.

Subsection 97E(1) of the SRC Act provides that the Commission may prepare and issue guidelines to the Chief Executive Officer of Comcare in relation to Comcare's determination of premiums to be paid by Entities and Commonwealth authorities in respect of a financial year.

The purpose of the *Safety, Rehabilitation and Compensation (97E(1) – Premium Determination) Guidelines 2022* (the Guidelines) is to set out the Commission's guidelines for how Comcare determines the annual workers' compensation premiums payable to Comcare by premium paying agencies. They guide Comcare's consideration of the matters set out in section 97A of the SRC Act. The Guidelines will replace the previous guidelines issued by the Commission pursuant to subsection 97E(1) of the SRC Act on the day after the instrument is registered.

The Guidelines are intended to ensure that: the workers' compensation scheme under the SRC Act is maintained in a fully funded position; the impact of claim performance and other variable costs on premiums is transparent and explained to premium payers; indicative premiums are advised to premium payers in time for consideration in the context of their budgets for the following financial year; significant changes to the premium calculations methodology are explained to premium payers; and that Comcare advises the Commission annually on its compliance with the Guidelines.

The instrument is a disallowable legislative instrument for the purposes of section 42 of the *Legislation Act 2003* and is made by the Commission under subsection 97E(1) of the SRC Act.

**CONSULTATION**

Comcare was consulted in relation to this instrument.

Because of the broad representative membership of the Commission, which made the Guidelines, no further consultation was undertaken.

The Commission is a tripartite representative body, comprised of a Chairperson, 3 members nominated by the Australian Council of Trade Unions, a member who represents the self-insured licensees, a member who represents the Commonwealth and Commonwealth authorities, the CEO of Safe Work Australia, a member who represents the interests of members and former members of the Defence Force, a member nominated by the Chief Minister for the Australian Capital Territory and represents the interests of the Australian Capital Territory's public sector employers, and 2 members with qualifications or experience relevant to the Commission's functions or the exercise of its powers.

#### **REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation has advised no Regulation Impact Statement is required (Ref: OBPR22-02491).

## NOTES ON SECTIONS

### Section 1 – Name

Section 1 provides that the title of the instrument is the *Safety, Rehabilitation and Compensation (97E(1) – Premium Determination) Guidelines 2022*.

### Section 2 – Commencement

Section 2 provides that the entirety of the instrument commences on the day after it is registered.

### Section 3 – Authority

Section 3 provides that the instrument is made under subsection 97E(1) 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 the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

### Section 6 – Determining Premiums

Section 6 provides the Guidelines applying to Comcare in determining the amount of premiums to be paid by each Entity and by each Commonwealth authority under the SRC Act in respect of a financial year. The guidelines explain that Comcare should, in determining premiums:

- aim to maintain the compensation scheme under the SRC Act in a fully funded position;
- determine premiums in a way which balances responsiveness to changes in claims experience with the need for stable and predictable premiums;
- avoid long-term cross subsidisation between Entities and Commonwealth authorities;
- where a methodology has been used to calculate a premium in one financial year, use the same methodology to calculate penalty and bonus amounts in the following year (regardless of whether the methodology has been varied in the interim);
- be transparent about and explain the impact of claim performance and other variable costs to premium payers;
- advise indicative premiums to premium payers in time for consideration in the context of their budgets for the following financial year;
- only make adjustments due to correction of data if these are identified before finalisation of the charge to which they relate, except for errors made by Comcare;
- explain significant changes in the methodology used to calculate premiums to premium payers; and Comcare advises the Commission annually on its compliance with the Guidelines;
- determine a minimum premium in relation to each Entity and Commonwealth authority to ensure that Comcare recovers its administrative costs;
- advise the Commission annually on its compliance with the Guidelines.

A note to this section points readers to the sections of the SRC Act which provide for the review of premium determinations.

The Minister may make directions to Comcare under section 73 of the SRC Act. If there is any inconsistency between directions made by the Minister and these Guidelines, the directions will prevail, and Comcare must comply with the directions over the Guidelines.

The only substantive change in the Guidelines from the previous version of the Guidelines is in subsection 6(a). The previous Guidelines provided that Comcare should aim to return the scheme to a fully funded position. Subsection 6(a) of these Guidelines provides Comcare should, in determining premiums, aim to maintain the scheme in a fully funded position. The change is made to reflect that the Comcare scheme has been fully funded since July 2017.

### **Schedule 1 – Repeals**

Schedule 1 repeals the guidelines the Commission had previously made under subsection 97E(1) of the SRC Act.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### **Safety, Rehabilitation and Compensation (97E(1) – Premium Determination) Guidelines 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**

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.

Comcare administers the workers' compensation scheme established under the SRC Act. As part of this role, Comcare collects premiums from the Entities and Commonwealth authorities whose employees are covered by the scheme. Premiums are not payable by licensed self-insurers. A premium is the amount an agency is required to pay Comcare for workers' compensation insurance. Premiums are based on the general trends in the premium pool and the individual agency's claim performance. Comcare calculates the premiums and its methodology is available on its website.

The SRC Act also establishes the Safety Rehabilitation and Compensation Commission (Commission). The Commission administers various regulatory functions under the SRC Act, and is the issuing authority and regulator of self-insurance licences under the SRC Act.

Section 97 of the SRC Act provides that Comcare must determine the premium to be paid by each Entity and Commonwealth authority for each financial year.

Subsection 97E(1) of the SRC Act provides that the Commission may prepare and issue guidelines to the Chief Executive Officer of Comcare in relation to Comcare's determination of premiums to be paid by Entities and Commonwealth authorities in respect of a financial year.

The purpose of the *Safety, Rehabilitation and Compensation (97E(1) – Premium Determination) Guidelines 2022* (the Guidelines) is to set out the Commission's guidelines for how Comcare determines the annual workers' compensation premiums payable to Comcare by premium paying agencies. They guide Comcare's consideration of the matters set out in section 97A of the SRC Act. The Guidelines will replace the previous guidelines issued by the Commission pursuant to subsection 97E(1) of the SRC Act on the day after the instrument is registered.

The Guidelines are intended to ensure that: the workers' compensation scheme under the SRC Act is maintained in a fully funded position; the impact of claim performance and other variable costs on premiums is transparent and explained to premium payers; indicative premiums are advised to premium payers in time for consideration in the context of their budgets for the following financial year; significant changes to the premium calculations methodology are explained to premium payers; and that Comcare advises the Commission annually on its compliance with the Guidelines.

The instrument is a disallowable legislative instrument for the purposes of section 42 of the *Legislation Act 2003* and is made by the Commission under subsection 97E(1) of the SRC Act.

#### **Human rights implications**

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* explains that everyone has a right to social security, including social insurance. General Comment 19 by the Committee on Economic, Social and Cultural Rights elaborates on Article 9, stating that nation

states should ensure the protection of workers who are injured in the course of employment or other productive work’.

Workers’ compensation, such as that provided through Comcare, is analogous to social insurance in that it provides payment of wages and medical costs to employees for injuries that are significantly contributed to by their employment, or arise out of, or in the course of, their employment.

Comcare collects premiums from Entities and Commonwealth authorities to fund its ability to pay compensation to injured employees. Section 97 of the SRC Act explains that in each financial year, Comcare must determine the amount (if any) of the premium to be paid by each Entity and each Commonwealth Authority. Section 97 also explains that in determining the premiums payable, it must act in accordance with guidelines issued by the Commission under section 97E of the SRC Act.

The Guidelines are intended to ensure that premiums in the Comcare scheme are sufficient to cover its liabilities. The Guidelines are also intended to ensure the premiums are determined in a fair, transparent, accountable and sustainable way. In doing so, the Guidelines promote the right to social security by supporting the Comcare workers’ compensation system.

### **Conclusion**

This legislative instrument is compatible with human rights because it promotes the right to social security, and in particular, the right to social insurance by way of workers’ compensation.