

EXPLANATORY STATEMENT

Issued by Comcare

Notice of a Disallowable Instrument

Safety, Rehabilitation and Compensation Act 1988 (the Act)

Safety, Rehabilitation and Compensation Act Amendment (Operational Standards for Rehabilitation Program Providers) Determination 2022 (the Operational Standards Amendment Instrument)

Authority

Under section 34E of the Act, Comcare must determine the operational standards to be complied with by rehabilitation program providers approved under subsection 34F(1) of the Act.

Purpose

Comcare has determined operational standards, to be complied with by approved rehabilitation program providers, under s34E of the Act in the *Safety, Rehabilitation and Compensation Act (Operational Standards for Rehabilitation Program Providers) Determination 2020 (the Operational Standards)*.

The purpose of the Operational Standards Amendment Instrument is to:

1. Correct three typographical errors in the Operational Standards which are in the note in section 4, subsection 6(1) and subsection 6(2) respectively; and
2. Insert 'Osteopath' in a newly created subparagraph 7(5)(a)(vi) in the Operational Standards to enable a registered health practitioner who is registered to practise as an 'osteopath' to be able to be defined as a 'relevantly qualified' individual under section 7 of the Operational Standards.

The Operational Standards is a legislative instrument for the purposes of the *Legislation Act 2003 (the LA)* and it is being amended by the Operational Standards Amendment Instrument which is also a legislative instrument for the purposes of the LA.

Consultation

Before the Operational Standards Amendment Instrument was made, Comcare was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

Comcare engaged in extensive consultation when developing the Operational Standards. This included consultation with approved program providers, the Australian Rehabilitation Providers Association, Rehabilitation Authorities (Australian Government Agencies and Licensees) and the Australian Council of Trade Unions.

Although Comcare is satisfied that the previous consultation continues to be sufficient for this version of the Instrument, additional consultation did occur with the Australian Rehabilitation Providers Association, Rehabilitation Authorities (Australian Government Agencies and Licensees)

and the Department of Veterans' Affairs. Stakeholders were supportive of this approach. Comcare is satisfied that the consultation undertaken is sufficient for this version of the Instrument.

Regulatory Impact Assessment

The Office of Better Practice Regulation advised that this instrument does not require a Regulatory Impact Statement (RIS) (OBPR ID: OBPR22-02990).

Statement of Compatibility with Human Rights

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

Safety, Rehabilitation and Compensation Act Amendment (Operational Standards for Rehabilitation Program Providers) Determination 2022 (the Instrument)

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* (**the HR Act**) requires a statement of compatibility with human rights to be prepared in relation to this legislative Instrument and paragraph 15J(2)(f) of the *Legislation Act 2003* requires that it be included in the explanatory statement.

This Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the HR Act.

Overview of the legislative instrument

This Instrument is made under section 34E of the *Safety, Rehabilitation and Compensation Act 1988* (**the SRC Act**).

The purpose of the Instrument is to:

1. Correct three typographical errors in the Operational Standards which are in the note in section 4, subsection 6(1) and subsection 6(2) respectively; and
2. Inserting 'Osteopath' in a newly created subparagraph 7(5)(a)(vi) in the Operational Standards to enable a registered health practitioner who is registered to practise as an 'osteopath' to be able to be defined as a 'relevantly qualified' individual under section 7 of the Operational Standards.

This Instrument will affect:

- employees requiring rehabilitation services;
- individuals, partnerships and companies (and their employees) approved as rehabilitation program providers; and
- employers with rehabilitation obligations towards employees.

Human rights implications

Comcare has assessed whether the Instrument is compatible with the human rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the HR Act as they apply to Australia.

The Instrument engages the following rights:

- the rights of people with disability;
- the right to work; and
- the right to privacy and reputation.

The rights of people with disability

The rights of people with disability are in the Convention of the Rights of Persons with Disabilities (CRPD). The CRPD rights engaged by the Instrument are Article 26 (habilitation and rehabilitation) and Article 27 (work and employment).

Article 26 requires countries to organise and strengthen habilitation and rehabilitation programmes for people with disability, particularly in health, employment, education and social services. Article 26(2) requires the promotion and development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

Article 27 establishes the right of persons with disabilities to work and includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. Article 27(1)(k) requires the promotion of vocational and professional rehabilitation, job retention and return to work programmes for persons with disabilities.

This Instrument is compatible with human rights because it advances the protection of rights for people with disability by encouraging rehabilitation and participation in the work force.

The Instrument broadens the categories of registered health practitioners who can be 'relevantly qualified' as defined in section 7 of the Operational Standards. This provides employees with an injury or illness, including those with disabilities, with greater scope of registered health practitioners who can be 'relevantly qualified' to provide rehabilitation services on behalf of rehabilitation program providers approved by Comcare.

The right to work

The Instrument engages the right to work set out at Article 6(1) of the International Covenant on Economic, Social and Cultural Rights, which is the right of everyone to the opportunity to gain their living by work which they freely choose or accept.

The measures taken in the Instrument generally promote the right to work. The measure reinforces the principle that labour market participation of people with disability should be encouraged and supported, and therefore complements the advancement of the rights of people with disability.

The Instrument limits the right to work by placing standards on who can provide rehabilitation services. The limitation is for the legitimate objective of assuring the quality of workplace rehabilitation service providers. The measure is rationally connected to this objective as it requires rehabilitation program providers to meet the Operational Standards. The limitations are reasonable, necessary and proportionate as they are directly relevant to and necessary for the provision of professional and skilled workplace rehabilitation services of a high standard.

Privacy

Article 17(1) of the International Covenant on Civil and Political Rights prohibits unlawful or arbitrary interference with a person's privacy, family, home and correspondence. The right to privacy is not an absolute right, and limitations are permissible.

The Instrument engages the right to privacy because Comcare may collect personal information to assess compliance with the Operational Standards. The collected information includes the qualifications and experience of individuals employed or otherwise engaged by rehabilitation program providers.

The ability to collect information to assess compliance with the Operational Standards is reasonable, necessary and proportionate, as all personal information will be lawfully collected in accordance with *the Privacy Act 1988* (Cth), and it is reasonably necessary for and directly related to Comcare's functions and powers under Part III of the SRC Act. Comcare does not collect any unnecessary personal information and all personal information collected is required for Comcare to perform its function in assessing rehabilitation program providers.

Conclusion

The Instrument is compatible with human rights because it promotes human rights, and to the extent that it may limit human rights those limitations are reasonable, necessary and proportionate.