

EXPLANATORY STATEMENT

Issued by Comcare

Notice of a Disallowable Instrument

Safety, Rehabilitation and Compensation Act 1988 (the Act)

Safety, Rehabilitation and Compensation Act Amendment (Criteria for Approval and Renewal of Rehabilitation Program Providers) Determination 2022 (the Criteria Amendment Instrument)

Authority

Under section 34D of the Act, Comcare must determine the criteria for approval, and renewal of approval, of rehabilitation program providers under sections 34B and 34J of the Act.

Purpose

Comcare has determined the criteria, to approve and renew approvals of rehabilitation program providers, under s34D of the Act in the *Safety, Rehabilitation and Compensation Act (Criteria for Approval and Renewal of Rehabilitation Program Providers) Determination 2022 (the Criteria)*.

The purpose of the Criteria Amendment Instrument is to:

1. Correct two typographical errors in subsection 8(2) of the Criteria; and
2. Insert 'Osteopath' in a newly created subparagraph 6(4)(a)(vi) in the Criteria 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 6 of the Criteria.

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

Consultation

Before the Criteria 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 Criteria. 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 the inclusion of osteopaths. 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 (Criteria for Approval and Renewal of 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 34D of the *Safety, Rehabilitation and Compensation Act 1988* (**the SRC Act**).

The purpose of this Instrument is to:

1. Correct two typographical errors in subsection 8(2) of the Criteria; and
2. Insert 'Osteopath' in a newly created subparagraph 6(4)(a)(vi) in the Criteria 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 6 of the Criteria.

This Instrument will affect:

- employees requiring rehabilitation services;
- individuals, partnerships and companies (and their employees) applying to be 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 6 of the Criteria. 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 restrictions on who can be approved to work as a workplace rehabilitation provider. The limitation is for the legitimate objective of providing assurance of the quality of workplace rehabilitation service providers. The measure is rationally connected to this objective as it requires that relevant qualifications be attained and maintained by people providing rehabilitation services on behalf of an approved program provider. The limitations are reasonable, necessary and proportionate as they ensure consistency for applicants in the assessment of the Comcare approval process; and 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 about an osteopath to assess compliance with the Criteria. The collected information includes the qualifications and experience of individuals employed or otherwise engaged by rehabilitation program providers.

The ability to collect information to consider applications 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 provider applicants.

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.