

**SAFETY, REHABILITATION AND COMPENSATION AMENDMENT (PERIOD  
FOR DECISION-MAKING) REGULATIONS 2023**

**EXPLANATORY STATEMENT**

Issued by authority of the Minister for Employment and Workplace Relations  
under 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.

Section 14 of the SRC Act provides that, subject to Part II of the Act, Comcare is liable to pay compensation in accordance with the SRC Act in respect of an injury suffered by an employee if the injury results in death, incapacity for work or impairment.

The liability to pay compensation 'in accordance with' the Act is a liability to pay compensation under the 'heads of compensation' provided for in Part II of the Act, such as medical treatment, incapacity and permanent impairment. After a determination is made under section 14 of the Act, further determinations need to be made under the applicable heads of compensation provisions.

Subsections 4(10) and (10A) of the SRC Act provide that, for the purposes of the application of the SRC Act to employees of licensed authorities and licensed corporations (respectively), a reference to 'Comcare' is a reference to a licensed authority or licensed corporation (as the case may be), unless a contrary intention appears. Accordingly, pursuant to subsections 4(10), 4(10A) and section 14, licensed authorities and licensed corporations are also liable to pay compensation in accordance with the SRC Act in respect of an injury suffered by their respective employees if the injury results in death, incapacity for work or impairment.

Part VI of the SRC Act concerns decision making under the Act. Under this Part, subsection 61(1A) provides that a 'determining authority' must consider and determine a claim under section 14 of the SRC Act, within the period prescribed by the regulations. A determining authority is defined for the purposes of Part VI of the Act to mean 'the person who made the determination'.

Subsection 62(6) of the SRC Act provides that a determining authority or person must also decide a request made by a claimant to reconsider a determination within the period prescribed by the regulations. Determinations may be reconsidered by a determining authority or person under sections 38 or 62 of the SRC Act.

Section 122 of the SRC Act provides the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Pursuant to subsections 61(1A), 62(6) and section 122 of the SRC Act the *Safety, Rehabilitation and Compensation Amendment (Period for Decision Making) Regulations 2023* (the Amendment Instrument) amends the *Safety, Rehabilitation and Compensation*

*Regulations 2019* to prescribe the following periods for decision making in relation to section 14 determinations:

- 20 calendar days for claims made in respect of an injury (other than a disease) or an aggravation of an injury (other than a disease); and
- 60 calendar days for claims made in respect of a disease; and
- 40 calendar days to decide a request made by a claimant to reconsider a determination.

The Amendment Instrument also clarifies that the periods prescribed by this instrument for decision making in relation to section 14 determinations do not include certain specified periods during which a determining authority is seeking further information or material in relation to a claim. This includes where:

- a determining authority requires a claimant to undergo an examination by a nominated legally qualified medical practitioner pursuant to section 57 of the SRC Act;
- a determining authority has requested the claimant provide further information or documentation under section 58 of the SRC Act;
- a determining authority requires an employer to provide information or documentation under section 71 of the SRC Act;
- a claimant has advised that they will be providing further evidence; and
- a determining authority considers it reasonable and necessary to obtain further medical evidence.

The Amendment Instrument commences on 1 April 2024 and will apply to claims for compensation made under section 14 of the SRC Act, and requests for reconsiderations made under either section 38 or 62 on or after the commencement of the Amendment Instrument.

## **CONSULTATION**

This instrument was made in consultation with Comcare. Representations from stakeholders, including claimants and the Law Council of Australia, were also considered.

## **IMPACT ANALYSIS**

The Office of Impact Analysis was consulted regarding this instrument and was satisfied that Impact Analysis is not required (OIA ID: 23-06094).

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

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### **Safety, Rehabilitation and Compensation Amendment (Period for Decision Making) Regulations 2023**

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.

Section 14 of the SRC Act provides that, subject to Part II of the Act, Comcare is liable to pay compensation in accordance with the SRC Act in respect of an injury suffered by an employee if the injury results in death, incapacity for work or impairment.

The liability to pay compensation 'in accordance with' the Act is a liability to pay compensation under the 'heads of compensation' provided for in Part II of the Act, such as medical treatment, incapacity and permanent impairment. After a determination is made under section 14 of the Act, further determinations need to be made under the applicable heads of compensation provisions.

Subsections 4(10) and (10A) of the SRC Act provide that, for the purposes of the application of the SRC Act to employees of licensed authorities and licensed corporations (respectively), a reference to 'Comcare' is a reference to a licensed authority or licensed corporation (as the case may be), unless a contrary intention appears. Accordingly, pursuant to sections 4(10), 4(10A) and 14, licensed authorities and licensed corporations are also liable to pay compensation in accordance with the SRC Act in respect of an injury suffered by their respective employees if the injury results in death, incapacity for work or impairment.

Part VI of the SRC Act concerns decision making under the Act. Under this Part, subsection 61(1A) provides that a 'determining authority' must consider and determine a claim under section 14 of the SRC Act, within the period prescribed by the regulations. A determining authority is defined for the purposes of Part VI of the Act to mean 'the person who made the determination'.

Subsection 62(6) of the SRC Act provides that a determining authority or person must also decide a request made by a claimant to reconsider a determination within the period prescribed by the regulations. Determinations may be reconsidered by a determining authority or person under sections 38 or 62 of the SRC Act.

Section 122 of the SRC Act provides the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Pursuant to subsections 61(1A), 62(6) and section 122 of the SRC Act the *Safety, Rehabilitation and Compensation Amendment (Period for Decision Making) Regulations 2023* (the Amendment Instrument) amends the *Safety, Rehabilitation and Compensation Regulations 2019* to prescribe the following periods for decision making in relation to section 14 determinations:

- 20 calendar days for claims made in respect of an injury (other than a disease) or an aggravation of an injury (other than a disease); and
- 60 calendar days for claims made in respect of a disease; and
- 30 calendar days to decide a request made by a claimant to reconsider a determination.

The Amendment Instrument also clarifies that the periods prescribed by this instrument for decision making in relation to section 14 determinations do not include certain specified periods during which a determining authority is seeking further information or material in relation to a claim. This includes where:

- a determining authority requires a claimant to undergo an examination by a nominated legally qualified medical practitioner pursuant to section 57 of the SRC Act;
- a determining authority has requested the claimant provide further information or documentation under section 58 of the SRC Act;
- a determining authority requires an employer to provide information or documentation under section 71 of the SRC Act;
- a claimant has advised that they will be providing further evidence; and
- a determining authority considers it reasonable and necessary to obtain further medical evidence.

The Amendment Instrument commences on 1 April 2024 and will apply to claims for compensation made under section 14 of the SRC Act, and requests for reconsiderations made under either section 38 or 62 on or after the commencement of the Amendment Instrument.

### **Human rights implications**

Article 7 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* provides for the right of everyone to the enjoyment of just and favourable conditions of work. Article 11 of the ICESCR provides for the right of everyone to an adequate standard of living. Article 9 of the ICESCR 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’.[1]

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. By doing so, it also supports the rights to just and favourable working conditions and to an adequate standard of living.

The Amendment Instrument engages, but does not limit, human rights. Its effect is to ensure that determining authorities consider claims for workers’ compensation the SRC Act in a timely manner. It does this by prescribing time periods for decision making in relation to both initial claims for compensation made under section 14 of the SRC Act, and requests for reconsideration of determinations made by claimants. Accordingly, the instrument enhances the right to just and favourable working conditions and to an adequate standard of living, by ensuring that liability is determined, and compensation paid in a timely manner.

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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].

## **Conclusion**

The legislative instrument is compatible with human rights because it promotes the right to social security, by way of assisting access to workers' compensation.

**The Hon Tony Burke MP**

Minister for Employment and Workplace Relations

## NOTES ON SECTIONS

### Section 1 – Name

Section 1 provides that the title of the instrument is the *Safety, Rehabilitation and Compensation Amendment (Period for Decision-Making) Regulations 2023*.

### Section 2 – Commencement

Section 2 provides that the instrument is to commence on 1 April 2024.

### Section 3 – Authority

Section 3 provides that the instrument is made under the *Safety, Rehabilitation and Compensation Act 1988*.

### Section 4 – Schedules

Section 4 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

#### Item 1 – Prescribed periods for decision-making

Item 1 amends Part 2 of the *Safety, Rehabilitation and Compensation Regulations 2019* to insert a new section 11A. Section 11A(1) provides that, for the purposes of subsection 61(1A) of the Act, the periods for decision-making for a claim for compensation under section 14, are prescribed.

Section 11A(2) provides that, for the purposes of subsection 62(6) of the Act, the period for decision-making for a request made by a claimant to reconsider a decision, is prescribed.

The Table in section 11A(3) provides the situation and the periods in which calendar days are not counted for the purposes of the prescribed periods contained within subsection 11A(1). It specifies the following situations:

1. a determining authority requires a claimant to undergo an examination by a nominated legally qualified medical practitioner pursuant to section 57 of the SRC Act;
2. a determining authority has requested the claimant provide further information or documentation under section 58 of the SRC Act;
3. a determining authority requires an employer to provide information or documentation under section 71 of the SRC Act;
4. a claimant has advised that they will be providing further evidence; and
5. a determining authority considers it reasonable and necessary to obtain further medical evidence.

#### Item 2 – Application of amendments

Item 2 amends Part 5 of the *Safety, Rehabilitation and Compensation Regulations 2019* to insert a new section 37, which provides that section 11A, as inserted by the *Safety, Rehabilitation and Compensation Amendment (Period for Decision-making) Regulations 2023*, applies in relation to a decision made under section 14 in accordance with section 54 of the Act, and in respect of a request to reconsider a decision made by a claimant on or after the commencement of that instrument.