The Safety, Rehabilitation and Compensation Act 1988 (‘the Act’) establishes the Commonwealth workers’ compensation and rehabilitation scheme.

Under Part VIII of the Act, an ‘eligible corporation’ may apply to the Safety, Rehabilitation and Compensation Commission (‘the Commission’) for a licence to:

(a) accept liability to pay workers’ compensation in respect of its employees in accordance with the Act; and

(b) manage the claims of its employees in accordance with the Act.

An ‘eligible corporation’ is a corporation that has been declared to be such by the Minister for Employment under subsection 100(1) of the Act. Subsection 100(1) of the Act provides that if the Minister is satisfied that it would be desirable for the Act to apply to employees of a corporation that:

(a) is, but is about to cease to be, a Commonwealth authority; or

(b) was previously a Commonwealth authority; or

(c) is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority;

the Minister may, by legislative instrument, declare the corporation to be eligible to be granted a licence under Part VIII of the Act.

BWA Group Services Pty Ltd (ABN 88 111 209 440) (‘Bankwest’) is a corporation carrying on business in competition with the Commonwealth Bank of Australia, a former Commonwealth authority. Bankwest has requested that the Minister declare it to be an eligible corporation under subsection 100(1) of the Act.

Applications for declarations under subsection 100(1) of the Act are assessed against the following principles:

(a) the likely impact on employees of the applicant;

(b) the likely impact on the applicant;

(c) the likely impact on the operation of the Commonwealth workers’ compensation scheme; and

(d) the likely impact on the operation of the State and Territory schemes.

Having assessed the application against the principles, the Minister is satisfied that it would be desirable for the Act to apply to the employees of Bankwest.

The declaration provides that Bankwest is eligible to be granted a licence under Part VIII of the Act.

If the Commission subsequently decides to grant an eligible corporation a licence, State and Territory workers’ compensation legislation will cease to apply to that corporation from the date the licence comes into force. Any liability or obligation incurred by the corporation under a State
or Territory law in relation to the injury or death of an employee, or any loss or damage suffered by an employee, before the licence comes into force is not affected.

The Office of Best Practice Regulation was consulted regarding this declaration and indicated that a Regulation Impact Statement was not required for this declaration (OBPR ID Number 16651).

Wider consultation was not undertaken as this declaration was made at the request of Bankwest itself and it is not likely to have a direct or substantial indirect effect on business, or restrict competition.

This declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. This declaration takes effect on the day after it is registered on the Federal Register of Legislative Instruments.
Statement of Compatibility with Human Rights

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

Safety Rehabilitation and Compensation (Licence Eligibility – BWA Group Services Pty Ltd)
Declaration 2014 (No. 1)

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 (Licence Eligibility – BWA Group Services Pty Ltd) Declaration 2014 (No. 1) is made in accordance with section 100 of the Safety, Rehabilitation and Compensation Act 1988 (‘the Act’), which establishes the Commonwealth workers’ compensation and rehabilitation scheme.

Under Part VIII of the Act, an ‘eligible corporation’ may apply to the Safety, Rehabilitation and Compensation Commission (‘the Commission’) for a licence to:

(a) accept liability to pay workers’ compensation in respect of its employees in accordance with the Act; and

(b) manage the claims of its employees in accordance with the Act.

An ‘eligible corporation’ is a corporation that has been declared to be such by the Minister for Employment (‘the Minister’) under subsection 100(1) of the Act.

If the Minister makes a declaration that a corporation is an eligible corporation under subsection 100(1), then the Commission must subsequently decide whether to grant the eligible corporation a licence. If a licence is granted, the Commonwealth workers’ compensation scheme, as established by the Act, will apply to the eligible corporation from the date the licence comes into force, to the exclusion of the State and Territory workers’ compensation schemes. Any liability or obligation incurred by the corporation under a State or Territory law in relation to the injury or death of an employee, or any loss or damage suffered by an employee, before the licence comes into force is not affected.

Declaration of BWA Group Services Pty Ltd as an ‘eligible corporation’

The declaration has the result that Bankwest is eligible to be granted a licence under Part VIII of the Act. A licence will only be granted if the Commission is satisfied that it is appropriate to do so.

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 elaborates on Article 9, stating that the ‘States parties should … ensure the protection of workers who are injured in the course of employment or other productive work’.1

Workers’ compensation is analogous to social insurance in that it provides payment of wages and medical costs to employees for injuries occurring as a result of their employment. Workers’ compensation is generally available instead of the right of employees to sue their employer for these costs. In Australia, there are separate but largely comparable workers’ compensation jurisdictions in the Commonwealth, State and Territory jurisdictions.

The effect of this declaration is that Bankwest is eligible to make an application to the Commission to be granted a licence.

Once this declaration is made, if Bankwest makes an application for the grant of a licence to the Commission under section 102 of the Act, the Commission may grant the licence. In order to grant Bankwest a licence, the Commission will be required to consider if it is appropriate to grant Bankwest a licence. To be satisfied that it is appropriate to grant Bankwest a licence, the Commission must be satisfied, among other things, that Bankwest has sufficient resources to fulfil the responsibilities imposed on it under the licence, has the capacity to meet the Commission’s standards for the rehabilitation and work health and safety of Bankwest’s employees, and that the grant of the licence will not be contrary to the interests of Bankwest’s employees (section 104 of the Act).

This declaration engages but does not limit human rights. Its effect is that it allows Bankwest to make an application for the grant of a licence, to be considered by the Commission. As a result, making the declaration does not affect the workers’ compensation rights of Bankwest’s employees and so does not limit the right to social security.

**Conclusion**

The Legislative Instrument is compatible with human rights because it does not negatively impact on human rights.

**Senator the Hon. Eric Abetz**

Minister for Employment