

SAFETY, REHABILITATION AND COMPENSATION

(97E(2) – REGULATORY CONTRIBUTIONS 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.

For some purposes under the SRC Act, liabilities, powers, functions and obligations of the Commonwealth are given to 'Entities'. An Entity is defined in s 4(1) of the SRC Act as:

- (a) an Agency, within the meaning of the *Public Service Act 1999*, that is not a Commonwealth authority;
- (b) a Parliamentary Department within the meaning of the *Parliamentary Service Act 1999*; or
- (c) a person, body, organisation or group of persons prescribed for the purposes of the definition.

A Commonwealth authority is relevantly defined in ss 4(1) and 96 of the SRC Act as, broadly and subject to the listed criteria, a body corporate:

- (a) incorporated for a public purpose by a law of the Commonwealth;
- (b) incorporated for a public purpose by a law of a Territory (other than the ACT or Northern Territory) and declared to be a body corporate to which the SRC Act applies;
- (c) incorporated under Commonwealth, state or territory law and the Commonwealth or a Territory (other than the ACT or Northern Territory) has a controlling or substantial interest, as the case may be;
- (d) in which a body corporate in the paragraph above has a controlling interest and is declared by the Minister to be a body corporate to which the SRC Act applies;
- (e) a public authority for the purposes of the *Work Health and Safety Act 2011* (WHS Act) (see s 96 SRC Act).

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.

One of Comcare's functions is as the regulator for work health and safety under the WHS Act and *Work Health and Safety Regulations 2011*. As part of this role, Comcare charges Entities and Commonwealth authorities fees, called regulatory contributions, for Comcare and the Commission's functions and activities under the SRC Act and WHS Act.

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

Subsection 97E(2) 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 regulatory contributions to be paid by Entities and Commonwealth authorities in respect of a financial year.

The purpose of the *Safety, Rehabilitation and Compensation (97E(2) – Regulatory Contributions Determination) Guidelines 2022* (the Guidelines) is to set out the Commission's guidelines for how Comcare determines regulatory contributions payable to Comcare by the employers of employees of Entities and Commonwealth authorities. They guide Comcare's consideration of the matters set out in

section 97D of the SRC Act. The Guidelines will replace the previous guidelines issued by the Commission pursuant to subsection 97E(2) of the SRC Act on the day after the instrument is registered.

The Guidelines are intended to ensure that the regulatory contributions Comcare collects in a financial year cover the total estimated regulatory costs referred to in subsection 97D(2) of the Act for that financial year; to ensure that Comcare publishes information explaining the methodology and data used to calculate regulatory contributions; to ensure that Comcare considers Entities' and Commonwealth authorities' budget timing when advising of regulatory contributions; to ensure that adjustments of regulatory contributions due to correction of data are only made in specified circumstances, and to ensure that Comcare reports annually to the Commission on the performance of the system for determining and collecting regulatory contributions, and consults the Commission, Entities and Commonwealth authorities about significant changes to the regulatory contributions methodology before implementing those changes.

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(2) 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(2) – Regulatory Contributions 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(2) 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 Regulatory Contributions

Section 6 provides the Guidelines applying to Comcare in determining the amount of regulatory contributions 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 regulatory contributions:

- in each financial year, collect regulatory contributions to fund the total estimated cost in that financial year of the regulatory costs referred to in subsection 97D(2) of the SRC Act.
- publish information explaining the methodology and data used to calculate regulatory contributions.
- consider Entities' and Commonwealth authorities' budget timing when advising regulatory contributions.
- only make corrections to the data used to calculate regulatory contributions in certain circumstances.

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

A regulatory contribution is the sum of two amounts:

- the part of the estimated cost incurred by the Commission and Comcare in carrying out their respective functions under the SRC Act (other than excluded functions) that Comcare determines, in accordance with the Guidelines, to be referable to an Entity or Commonwealth authority; and
- that part of the estimated cost incurred by the Commission and Comcare in carrying out their respective functions under the *Occupational Health and Safety Act 1991*, the WHS Act and the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011* that Comcare determines, in accordance with those guidelines, to be referable to an Entity or Commonwealth authority.

In determining regulatory contributions, Comcare must comply with section 97D of the SRC Act.

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(b). The previous version provided that Comcare should report to each Entity and Commonwealth authority on the methodology and data used to calculate their respective regulatory contribution. These Guidelines instead provide that Comcare should publish information explaining the methodology and data used to calculate regulatory contributions. This change better reflects the practical reality of how Comcare communicates information about the methodology and data used to calculate regulatory contributions to Entities and Commonwealth authorities.

Section 7 – Reporting and Consulting

Section 7 provides that Comcare shall report to the Commission each year on the performance of the system for determining and collecting regulatory contributions, and consult the Commission, Entities and Commonwealth authorities about significant changes to the regulatory contributions methodology before implementing those changes.

Schedule 1 – Repeals

Schedule 1 repeals the guidelines the Commission has previously made under subsection 97E(2) 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(2) – Regulatory Contributions 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.

For some purposes under the SRC Act, liabilities, powers, functions and obligations of the Commonwealth are given to 'Entities'. An Entity is defined in s 4(1) of the SRC Act as:

- (d) an Agency, within the meaning of the *Public Service Act 1999*, that is not a Commonwealth authority;
- (e) a Parliamentary Department within the meaning of the *Parliamentary Service Act 1999*; or
- (f) a person, body, organisation or group of persons prescribed for the purposes of the definition.

A Commonwealth authority is relevantly defined in ss 4(1) and 96 of the SRC Act as, broadly and subject to the listed criteria, a body corporate:

- (f) incorporated for a public purpose by a law of the Commonwealth;
- (g) incorporated for a public purpose by a law of a Territory (other than the ACT or Northern Territory) and declared to be a body corporate to which the SRC Act applies;
- (h) incorporated under Commonwealth, state or territory law and the Commonwealth or a Territory (other than the ACT or Northern Territory) has a controlling or substantial interest, as the case may be;
- (i) in which a body corporate in the paragraph above has a controlling interest and is declared by the Minister to be a body corporate to which the SRC Act applies;
- (j) a public authority for the purposes of the *Work Health and Safety Act 2011* (WHS Act) (see s 96 SRC Act).

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.

One of Comcare's functions is as the regulator for work health and safety under the WHS Act and *Work Health and Safety Regulations 2011*. As part of this role, Comcare charges Entities and Commonwealth authorities fees, called regulatory contributions, for Comcare and the Commission's functions and activities under the SRC Act and WHS Act.

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

Section 97E(2) 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 regulatory contributions to be paid by Entities and Commonwealth authorities in respect of a financial year.

The purpose of the *Safety, Rehabilitation and Compensation (97E(2) – Regulatory Contributions Determination) Guidelines 2022* (the Guidelines) is to set out the Commission’s guidelines for how Comcare determines regulatory contributions payable to Comcare by the employers of employees of Entities and Commonwealth authorities. They guide Comcare’s consideration of the matters set out in section 97D of the SRC Act. The Guidelines will replace the previous guidelines issued by the Commission pursuant to section 97E(2) of the SRC Act on the day after the instrument is registered.

The Guidelines are intended to ensure that the regulatory contributions Comcare collects in a financial year cover the total estimated regulatory costs referred to in subsection 97D(2) of the Act for that financial year; to ensure that Comcare publishes information explaining the methodology and data used to calculate regulatory contributions; to ensure that Comcare considers Entities’ and Commonwealth authorities’ budget timing when advising of regulatory contributions; to ensure that adjustments of regulatory contributions due to correction of data are only made in specified circumstances, and to ensure that Comcare reports annually to the Commission on the performance of the system for determining and collecting regulatory contributions, and consults the Commission, Entities and Commonwealth authorities about significant changes to the regulatory contributions methodology before implementing those changes.

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 s 97E(2) of the SRC Act.

Human rights implications

Article 7 of the *International Covenant on Economic, Social and Cultural Rights* explains that everyone has a right to just and favourable conditions of work. Subparagraph (b) of article 7 explains that just and favourable conditions of work should ensure, in particular, safe and healthy working conditions. Work health and safety regulation, such as that provided by Comcare, helps to protect workers and other people against harm to their health and safety by eliminating and minimising risks arising from work, so far as is reasonably practicable. In this way, work health and safety regulation helps to ensure safe and healthy working conditions.

Comcare collects regulatory contributions to fund its ability to regulate work health and safety in the workplaces of Entities and Commonwealth authorities. Section 97D of the SRC Act explains that in each financial year, Comcare must determine the amount of the regulatory contribution to be paid by each Entity and each Commonwealth Authority. Section 97E(2) of the Act sets out that the Commission may issue guidelines to Comcare’s CEO in relation to Comcare’s determination of regulatory contributions to be paid by Entities and Commonwealth Authorities.

The Guidelines are intended to ensure that the cost of Comcare’s work health and safety regulatory activities are appropriately funded by the Entities and Commonwealth authorities which Comcare regulates. The Guidelines are also intended to ensure that the methodology for the calculation of the regulatory contributions is fair, transparent, and accountable. In doing so, the Guidelines promote the right to safe and healthy working conditions.

Conclusion

This legislative instrument is compatible with human rights because it promotes the right to just and favourable conditions of work, and in particular, safe and healthy working conditions.