

EXPLANATORY STATEMENT

Safety, Rehabilitation and Compensation Act 1988

Issued by Comcare

Notice of a Disallowable Instrument

Revocation of the Guidelines for Rehabilitation Authorities 2005 and approval of the Guidelines for Rehabilitation Authorities 2012

The purpose of the instrument to which this Explanatory Statement relates is to approve the revocation of the current Guidelines for Rehabilitation Authorities issued on 1 September 2005 and approve the new Guidelines for Rehabilitation Authorities 2012 to apply from 1 July 2012.

Section 41 of the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) provides that Comcare may prepare and issue to rehabilitation authorities guidelines in relation to the performance or exercise by those authorities of their functions or powers under Part III (rehabilitation) of the SRC Act. The section also provides that a rehabilitation authority shall comply with any guidelines issued under this section.

A rehabilitation authority is the principal officer of a licensed authority, licensed corporation, Entity or Commonwealth authority who is the current or most recent scheme employer; or, the Chief of the Defence Force for members of the Defence Force.

The new guidelines have been prepared in accordance with the format required by the *Legislative instruments Act 2003* and are more specific in their requirements than the 2005 version and provide an additional level of clarity and authority by way of guidance for rehabilitation authorities in the performance of their rehabilitation functions and powers.

The guidelines specify that the aim of rehabilitation is to restore as speedily as possible, and as far as is reasonably practicable, an injured employee to the same physical and psychological state, and social and vocational status as the injured employee had before suffering the injury.

The guidelines also address the requirements on employers to appropriately resource and oversight through management systems the delivery of effective rehabilitation to their employees. The document provides specific guidance to rehabilitation case managers (as delegated by the rehabilitation authority) addressing early rehabilitation intervention, assessments of employee capabilities to undertake rehabilitation, the provision of rehabilitation programs and enforcement powers.

The guidelines have been subject to extensive internal and external consultation. A draft was placed on Comcare's internet site in April 2011 and circulated directly to a substantial number of key stakeholders such as Commonwealth authorities, licensed authorities and corporations, unions and approved rehabilitation providers. Comcare received extensive written submissions as a result, with substantial support for the guidelines from many quarters and suggestions for improvement and clarification from others. The Safety, Rehabilitation and Compensation Commission and the Minister for the Department of Employment and Workplace Relations have been briefed.

The guidelines were also highlighted in a number of Comcare circulars and publications to the whole jurisdiction. They were the subject of three interstate workshops with

representatives of rehabilitation authorities in July and August 2011 and presented to three national rehabilitation case manager forums in November 2011. Comcare also met with the Department of Veterans' Affairs to discuss elements of the guidelines unique to defence members on a number of occasions and with the ACT Government to address its concerns in December 2011. Each round of consultation resulted in improved amendments to the document.

The guidelines will be supported by supplementary publications available from Comcare and by Comcare delivering training and support services to rehabilitation authorities. These include Comcare's Regulation Policy document to ensure employers, rehabilitation authorities and delegates comply with the guidelines by self assessment, cooperation with external Comcare audits and the provision of reports on rehabilitation performance.

Regulatory Impact Statement

Comcare wrote to the Office of Better Practice Regulation (OBPR) advising that, as the majority of requirements flowing from the new guidelines have already been accommodated by the non Government licensed corporations, there would not be any significant increase in cost by these corporations in complying with the new guidelines. As a consequence OBPR advised Comcare that a Regulatory Impact Statement was not required.

Statement of Compatibility with Human Rights

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

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*.

The guidelines provide transparent direction to employers, rehabilitation authorities, their delegates and injured employees in the management practices required to assist those employees in returning to or being maintained at work and/or in maintaining or improving their activities of daily living. The guidelines specifically require that the employee is informed of and participates in each stage of the rehabilitation process.

The SRC Act, reinforced by these guidelines, provides the employee with both responsibilities and rights in respect to the legislated rehabilitation process. These rights include the right to be informed of the delegates' deliberations, the outcome of assessments and examinations undertaken to assess the employee's work capacity and the composition and objectives of rehabilitation programs. The employee is also afforded the right to seek a review of determinations made under the SRC Act in relation to the rehabilitation process.

The guidelines stress the application of the *Disability Discrimination Act 1992* in ensuring discrimination does not occur against an employee on the grounds of their disability. Consequently, these guidelines are compatible with human rights because it advances their protection.

Paul O'Connor
Chief Executive Officer
Comcare

22 May 2012