

## EXPLANATORY STATEMENT

### *Safety, Rehabilitation and Compensation Act 1988*

Issued by the Minister for Small and Family Business, the Workplace and Deregulation

#### **Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Instrument 2018**

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.

Pursuant to sections 21 and 21A of the SRC Act, if an employee who is entitled to weekly incapacity payments under the Act receives a lump sum superannuation benefit as a result of the employee's retirement, the amount of weekly compensation payable to the employee is reduced by an amount that is derived from a defined 'weekly interest on the lump sum' amount.

For the purposes of sections 21 and 21A of the SRC Act, the 'weekly interest on the lump sum' amount is calculated by multiplying the value of the lump sum benefit by the interest rate specified by the Minister, under subsection 21(5) of the SRC Act, and dividing the result by 52.

Subsection 21(5) of the SRC Act provides that the Minister may, by legislative instrument, specify a rate that applies for the period of 12 months commencing on 1 July in any year for the purposes of the definition of 'weekly interest on the lump sum' in subsections 21(3) and 21A(3) of the Act.

Pursuant to subsection 21(5) of the SRC Act, this instrument specifies the rate which is used for the purposes of the definition of 'weekly interest on the lump sum' in subsections 21(3) and 21A(3) of the SRC Act in the period from 1 July 2018 to 30 June 2019.

This rate has been derived by obtaining the daily 10-year Government Bond rates from the Reserve Bank of Australia, averaging them for the period 1 April 2017 to 31 March 2018 and rounding to two decimal places. Over this period, the average 10-year Government Bond rate has been calculated to be 2.64 per cent.

Accordingly, the instrument specifies a rate of 2.64 per cent for the period 1 July 2018 to 30 June 2019.

The instrument also formally repeals all the 'self-ceasing' instruments previously made by the Minister pursuant to subsection 21(5) of the SRC Act that are no longer in force. To maintain a central record of the rates specified in previous years following such repeal, Schedule 2 to this instrument includes a list of all rates specified by previous legislative instruments pursuant to subsection 21(5) of the SRC Act. Schedule 2 does not form part of the specification made by this instrument.

#### **Consultation**

Consultation was not undertaken in relation to this instrument as required under section 17 of the *Legislation Act 2003*. Where consultation has not been undertaken, section 15 of the *Legislation Act 2003* requires an explanation of why the consultation was not undertaken. The proposal is minor in nature and does not have regulatory impacts on businesses, community organisations or individuals.

Routine specification of the interest rate to be applied on the (superannuation) lump sum of retired employees has been determined in accordance with a well-established method, the Government Bond rates, for a number of years. This method of calculating the weekly interest rate has not changed and is well known. Given that this instrument is of a minor nature and does not alter existing arrangements, consultation under section 17 of the *Legislation Act 2003* was considered "not appropriate or reasonably practicable".

## **Regulation Impact Statement**

The Office of Best Practice Regulation was consulted regarding this declaration and indicated that a Regulatory Impact Statement was not required (OBPR ID: 20920).

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

This instrument takes effect from 1 July 2018.

## Statement of Compatibility with Human Rights

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

### Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Instrument 2018

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.

Pursuant to sections 21 and 21A the SRC Act, if an employee who is entitled to weekly incapacity payments under the Act receives a lump sum superannuation benefit as a result of the employee's retirement, the amount of weekly compensation payable to the employee is reduced by an amount that is calculated using a 'weekly interest on the lump sum' amount.

Subsection 21(5) of the SRC Act provides that the Minister may, by legislative instrument, specify a rate that applies for the period of 12 months commencing on 1 July in any year for the purposes of the definition of 'weekly interest on the lump sum' in subsections 21(3) and 21A(3) of the Act.

Pursuant to subsection 21(5) of the SRC Act, this instrument specifies the rate which is used for the purposes of the definition of 'weekly interest on the lump sum' in subsections 21(3) and 21A(3) of the SRC Act in the period from 1 July 2018 to 30 June 2019.

This rate has been derived by obtaining the daily 10-year Government Bond rates from the Reserve Bank of Australia, averaging them for the period 1 April 2017 to 31 March 2018 and rounding to two decimal places. Over this period, the average 10-year Government Bond rate has been calculated to be 2.64 per cent.

#### 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'.<sup>1</sup> 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.

The calculation of the rate of the weekly interest on the lump sum has been determined in accordance with a well-established method, the Government Bond rates. This method has been used to determine the rate of the weekly interest on the lump sum for the purposes of subsection 21(5) of the SRC Act for the past nine years and is considered to conservatively reflect interest rates able to be earned on long term investments.

#### Conclusion

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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].

This legislative instrument is compatible with human rights.

**The Hon Craig Laundy**

Minister for Small and Family Business, the Workplace and Deregulation