



# **Safety, Rehabilitation and Compensation Directions 2019**

made under section 89D of the Safety, Rehabilitation and Compensation Act 1988

## **Compilation No. 1**

**Compilation date:** 9 April 2022

**Includes amendments up to:** F2022L00577

**Prepared by:** Attorney-General's Department

## About this compilation

### This compilation

This is a compilation of the *Safety, Rehabilitation and Compensation Directions 2019* that shows the text of the law as amended and in force on 9 April 2022 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Preliminary

### 1 Name

This instrument is the *Safety, Rehabilitation and Compensation Directions 2019*.

### 3 Authority

This instrument is made under section 89D of the *Safety, Rehabilitation and Compensation Act 1988*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in the definitions section of the Act, including the following:

- (a) Commission;
- (b) Commonwealth authority;
- (c) licence;
- (d) licensee.

In this instrument:

*Act* means the *Safety, Rehabilitation and Compensation Act 1988*.

***outstanding tail liability*** means the indicative value of outstanding claim liabilities arising under the Act in relation to injury, loss, damage, or death suffered by employees of a Commonwealth authority in the period prior to the commencement of a licence during which the Commonwealth authority paid an annual premium under the Act, calculated by Comcare as at the date upon which the Commonwealth authority will, or proposes to, assume such liability.

***preserved licence*** has the same meaning as in the Regulations.

***Regulations*** means the *Safety, Rehabilitation and Compensation Regulations 2019*.

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## **Part 2—Criteria and procedures—grant of licences**

### **6 Matters to be considered in deciding whether to grant a licence— Commonwealth authorities**

The Commission must not grant a licence to a Commonwealth authority, other than to the Australian Capital Territory, under section 104 of the Act, unless the Commission is satisfied that claims will be managed by employees of:

- (a) the applicant; or
- (b) Comcare; or
- (c) a Comcare subsidiary; or
- (d) another Commonwealth authority.

#### **6A Notification of proposed authorisation to accept tail liabilities**

- (1) This section applies if a Commonwealth authority has applied for, or the Commission proposes to grant, a licence that authorises a Commonwealth authority to accept any liability arising under the Act in relation to injury, loss, damage or death that has occurred at a time before the proposed licence will come into force.
- (2) The Commission must not grant a licence unless it has notified the Minister, in writing, of:
  - (a) the extent to which the Commonwealth authority would be authorised to accept liability under the Act in relation to injury, loss, damage or death that has occurred prior to the commencement of the licence; and
  - (b) the estimated amount of outstanding tail liability that would be assumed by the Commonwealth authorityunder the proposed licence.

### **7 Matters to be considered in deciding whether to grant a licence—eligible corporations**

The Commission must not grant a licence to an eligible corporation under section 104 of the Act unless the Commission is satisfied, on reasonable grounds, that satisfactory arrangements have been made to ensure that payments that would be required to be made under the Act to, or in respect of, the eligible corporation's employees will continue to be paid if that corporation is wound up.

## **8 Licence decision**

- (1) In the written notice informing the applicant of the Commission's decision to grant the licence sought in accordance with subsection 104(1) of the Act, the Commission must specify:

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- (a) the scope of the licence so far as concerns the degree to which, and the circumstances in which, the licensee may accept liability for compensation; and
  - (b) the scope of the licence so far as concerns the degree to which, and the circumstances in which, the licensee is authorised to manage claims; and
  - (c) the conditions to which the grant of the licence is subject; and
  - (d) the period for which the licence is granted.
- (2) The Commission must publish the written notice referred to in subsection (1) in the *Gazette* or by notifiable instrument.

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## Part 3—Scope and conditions of licence

### Division 3.1—Licences granted to Commonwealth authorities

#### 9 Application

This Division applies to a licence granted by the Commission to a Commonwealth authority.

#### 10 Acceptance of liability – prior Class 3 licence or Class A or B licence

If, immediately before 1 April 2002, the licensee held a Class 3 licence under Part VIIIA of the Act or a Class A or B licence under Part VIIIB of the Act (the *previous licence*), the Commission may authorise the licensee to accept liability to pay compensation and other amounts under the Act for a particular injury, loss or damage suffered by, or for the death of, some or all of its employees for claims for an injury, loss, damage or death:

- (a) that occurred during the period for which the previous licence was in force; or
- (b) that occurs during the period specified in the licence.

#### 11 Claims management

- (1) The Commission may only grant a licence to a Commonwealth authority that authorises the licensee, or a specified person acting on the licensee's behalf, to manage some or all of the claims made by employees of the licensee under the Act if the licence authorises only the persons set out in subsection (2) to manage claims on behalf of the licensee.

*Who may manage claims on behalf of a licensed authority*

- (2) The licence may only authorise the following persons to manage claims on behalf of the licensee:
  - (a) Comcare;
  - (b) a Comcare subsidiary;
  - (c) employees of Comcare or of a Comcare subsidiary;
  - (d) another Commonwealth authority;
  - (e) employees of another Commonwealth authority.
- (3) This provision does not apply in relation to a licence that is, or will be, granted to the Australian Capital Territory.

#### 11A Notification of request to accept tail liabilities

- (1) This section applies if a Commonwealth authority has requested in writing, a variation of licence that would, if granted, authorise the Commonwealth authority to accept any liability arising under the Act in relation to injury, loss, damage or death that has occurred at a time before the licence commenced.

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- (2) The Commission must not vary the scope of the licence unless it has notified the Minister, in writing, of:
- (a) the extent to which the Commonwealth authority would be authorised to accept liability under the Act in relation to injury, loss, damage or death that has occurred prior to the commencement of the licence; and
  - (b) the estimated amount of outstanding tail liability that would be assumed by the Commonwealth authority
- under the requested variation of licence.



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## **Division 3.2—Licences granted to eligible corporations**

### **12 Application**

This Division applies to a licence granted by the Commission to a corporation (other than a corporation that is a Commonwealth authority).

### **13 Conditions**

- (1) The licence may include the following conditions:
  - (a) if requested in writing by the Commission to do so, the licensee must give to the Commission the information relating to the licensee's operations under the Act that is specified in the request;
  - (b) the licensee must lodge with the Commission, within 120 days after the end of each accounting period (or, if the Commission allows a longer period, within that period), a copy of the accounts required under the law of the place of the licensee's incorporation for the accounting period;
  - (c) the licensee must include and identify in the accounts mentioned in paragraph (b) provision for meeting the licensee's accrued and contingent liability as at the end of the accounting period for claims made under the Act in the accounting period.
- (2) If the licence includes the condition mentioned in paragraph (1)(c), the licence must also include a condition that:
  - (a) the provision mentioned in that paragraph must be consistent with a written evaluation, by an actuary, of the licensee's accrued and contingent liability for the accounting period; and
  - (b) the evaluation mentioned in paragraph (a) must be lodged with the Commission.

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## **Division 3.3—General**

### **14 Conditions—claims management**

- (1) The Commission may only grant a licence that authorises a licensee, or a specified person acting on the licensee's behalf, to manage some or all of the claims made by employees of the licensee under the Act if the licence contains the conditions in subsection (2).

#### *Conditions*

- (2) The licensee or specified person, in managing claims:
- (a) must be guided by equity, good conscience and the substantial merits of the case, without regard to technicalities; and
  - (b) is not required to conduct a hearing; and
  - (c) is not bound by the rules of evidence.

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## **Part 4—Criteria and procedures—suspension and revocation of licences**

### **15 Revocation or suspension of licence at the instance of the Commission**

- (1) The Commission may, under section 106 of the Act, suspend or revoke a licence held by a Commonwealth authority.
- (2) The Commission may, under section 106 of the Act, revoke, but may not suspend, a licence held by a licensed corporation.

#### *Notice to the licensee*

- (3) If the Commission suspends or revokes a licence under section 106 of the Act, the Commission must give the licensee written notice:
  - (a) stating that the Commission has suspended or revoked the licence under section 106 of the Act; and
  - (b) stating the date of effect of the suspension or revocation; and
  - (c) for notices relating to a suspension—state the period for which the licence is suspended; and
  - (d) setting out the reasons for the suspension or revocation.

#### *Notice to be published*

- (4) If the Commission revokes or suspends a licence under section 106 of the Act, the Commission must publish a notice in the *Gazette* or by notifiable instrument:
  - (a) stating that the licence has been suspended or revoked under section 106 of the Act; and
  - (b) stating the date of effect of the suspension or revocation; and
  - (c) for a notice relating to a suspension—state the period of suspension.

### **16 Suspected breach of condition**

- (1) For subsection 106(2) of the Act, the procedure set out in this section is a procedure preliminary to the suspension or revocation of a licence at the instance of the Commission.
- (2) If the Commission believes, on reasonable grounds, that a licensee may have breached a condition to which the grant of the licence is subject, the Commission may give a written notice to the licensee:
  - (a) stating that the Commission believes that the licensee may have breached a condition of its licence; and
  - (b) giving details of the matters that the Commission considers may constitute the breach; and
  - (c) stating that if the Commission is satisfied that a breach has occurred, the Commission may:

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- (i) if the licensee is a Commonwealth authority—suspend or revoke the licence; or
    - (ii) if the licensee is a licensed corporation—revoke the licence; and
  - (d) inviting the licensee to make written submissions in relation to the matter to the Commission, within 30 days after receiving the notice.
- (3) If the licensee makes a submission within the period mentioned in paragraph (2)(d), the Commission must consider the submission.

## **17 Revocation of licence at the request of licensee**

- (1) If the Commission decides to revoke a licence under section 107 of the Act, the Commission must give the licensee a notice in writing, stating:
  - (a) that the Commission has revoked the licence under section 107 of the Act; and
  - (b) the date of effect of the revocation.
- (2) The Commission must publish the written notice referred to in subsection (1) in the *Gazette* or by notifiable instrument.

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## **Part 5—Notices**

### **18 Variation of scope of licence or extension of term of licence**

- (1) If the Commission varies the scope of a licence or extends the term of a licence, the Commission must publish a notice in the *Gazette*, or by notifiable instrument, setting out the variation made to the scope of the licence or the extension of the term of the licence.
- (2) If the Commission varies the scope of a preserved licence, the Commission must publish a notice in the *Gazette*, or by notifiable instrument, setting out the variation made to the scope of the preserved licence.

### **19 Variation of conditions**

If, the Commission varies a condition to which the grant of a licence or preserved licence is subject, the Commission must publish a notice in the *Gazette*, or by notifiable instrument, setting out the variation made to the condition.

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## **Part 6—Recordkeeping and reporting**

### **20 Commission must keep records**

The Commission must keep records of the following:

- (a) applications for licences;
- (b) refusals to grant licences;
- (c) grants of licences, including the scope of the licences and the conditions to which the licences are subject;
- (d) expiry of licences;
- (e) suspensions of licences;
- (f) revocations of licences;
- (g) breaches of licences and preserved licences;
- (h) suspected breaches of licences and preserved licences.

### **21 Reporting**

The Commission must include details of the records mentioned in paragraphs (a) to (g) inclusive in section 20 for a financial year in the Commission's annual report for that financial year under section 89S of the Act.

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

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## Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
exp = expires/expired or ceases/ceased to have effect	renum = renumbered
F = Federal Register of Legislation	rep = repealed
gaz = gazette	rs = repealed and substituted
LA = <i>Legislation Act 2003</i>	s = section(s)/subsection(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
(md) = misdescribed amendment can be given effect	Sdiv = Subdivision(s)
(md not incorp) = misdescribed amendment cannot be given effect	SLI = Select Legislative Instrument
mod = modified/modification	SR = Statutory Rules
No. = Number(s)	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced



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### Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
<i>Safety, Rehabilitation and Compensation Directions 2019</i>	14 Mar 2019 (F2019L00299)	s 1-3: 15 March 2019 s 4-21, sch 1: 28 March 2019	-
<i>Safety, Rehabilitation and Compensation Directions Amendment Instrument 2022</i>	8 Apr 2022 (F2022L00577)	9 April 2022	-

### Endnote 4—Amendment history

Provision affected	How affected
s 2 .....	rep LA s 48D
s 4 .....	am F2022L00577
s 5 .....	rep LA s 48C
s 6A .....	ad F2022L00577
s 11A .....	ad F2022L00577
sch 1 .....	rep LA s 48C