

EXPLANATORY STATEMENT

Safety, Rehabilitation and Compensation Act 1988

Issued by the Minister for Jobs and Industrial Relations

Safety, Rehabilitation and Compensation Regulations 2019

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.

Section 122 of the SRC Act provides that the Governor-General may make regulations prescribing matters required or permitted by the SRC Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the SRC Act.

The *Safety, Rehabilitation and Compensation Regulations 2002* (2002 Regulations) will sunset on 1 October 2019 by operation of the *Legislation Act 2003*. The *Safety, Rehabilitation and Compensation Regulations 2019* (Regulations) replace the 2002 Regulations.

The Regulations substantially remake the 2002 Regulations and include some updates as well as minor amendments for clarity and to ensure consistency with modern drafting practices. Changes made by the Regulations include:

- prescribing speech pathologists in addition to speech therapists in the definition of 'medical treatment' because, while both terms are used, 'speech pathologist' is now more commonly used in Australia;
- replacing the reference to persons registered under the law of a State or Territory with a reference to persons registered by a national registration authority within the meaning of s 8 of the *Healthcare Identifiers Act 2010*, as registration of relevant healthcare professionals has been harmonised under the Healthcare Identifiers legislation;
- updating the information required to accompany an application for grant of a licence, to ensure the Safety, Rehabilitation and Compensation Commission (the Commission) is provided with all relevant information it requires to consider the application;
- introducing the concept of the 'final licence', which refers to the version of the licence which was held by the licensee immediately before the licence was revoked;
- introducing the concepts of the 'preserved licence' and the 'preservation period' in relation to a licence which is revoked. The preservation period starts on the day a licence is revoked and ends when there are no remaining liability, functions, obligations or responsibilities under the SRC Act. The preserved licence preserves the functions, powers, rights, obligations and liabilities of Comcare, the Commission and the former licensee during the preservation period; and
- removing bodies from the list of Entities for the purposes of the SRC Act, where the relevant body either has ceased to exist, or is otherwise captured under the SRC Act.

The purpose of this instrument is to deal with the following matters within the context of the workers' compensation scheme established by the SRC Act:

- the indexation and calculation of an employee's normal weekly earnings;
- the renewal dates and application fees for the approval and renewal of rehabilitation program providers;
- application requirements for the grant of a licence to accept liability and/or manage claims;
- the consequences of the suspension and revocation of a licence to accept liability and/or manage claims;
- the application and transitional provisions from the 2002 Regulations to the Regulations; and
- matters prescribed for the purposes of the SRC Act, including Entities and principal officers to be covered by the SRC Act.

Details of the provisions of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislation.

Consultation

Stakeholder consultations were conducted in February 2019. The Department of Jobs and Small Business consulted with employee representatives (including the Australian Council of Trade Unions, unions and lawyers); the Safety, Rehabilitation and Compensation Licensees Association; licensees; Comcare; the Commission; the Department of Veterans' Affairs; the Australian Taxation Office; the Department of Human Services; and the Australian Public Service Commission.

Rehabilitation program providers were consulted on costs for the assessment of initial application and renewal of applications.

Where appropriate, feedback received from stakeholders in the consultation process has been incorporated into this instrument to ensure policy outcomes are met, provide additional clarity and to update terminology.

Regulation Impact Statement

The Office of Best Practice Regulation has confirmed that a Regulatory Impact Statement is not required (OBPR ID 24668).

Safety, Rehabilitation and Compensation Regulations 2019

Part 1—Preliminary

Section 1 – Name of Regulations

1. The name of these Regulations is the *Safety, Rehabilitation and Compensation Regulations 2019*.

Section 2 – Commencement

2. The Regulations commence on the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

3. The Regulations are made under s 122 of the SRC Act.

Section 4 – Schedule 3

4. This is a standard provision which provides that each instrument that is specified in Schedule 3 to this instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule has effect according to its terms.

Section 5 – Definitions

5. Unless stated otherwise, the Regulations adopt the definitions in the SRC Act. A number of these terms have been flagged in the note to s 5. Other terms used in this instrument that adopt the definitions in the SRC Act include:
 - ‘claim’, ‘employee’, ‘loss’, ‘principal officer’, ‘rehabilitation authority’, ‘rehabilitation program’ and ‘therapeutic treatment’ (defined in s 4(1) of the SRC Act); and
 - ‘eligible applicant’ and ‘eligible corporation’ (defined in s 99 of the SRC Act).
6. Section 5 also introduces a number of new definitions for the purposes of this instrument. Apart from the definitions of ‘manage’ and ‘indexation date’, these definitions are contained in provisions of this instrument.
7. Both ‘indexation date’ and ‘manage’ are defined in the SRC Act for the purposes of a specific section (‘indexation date’ is defined in s 8(9B) for the purposes of s 8(9C) of the SRC Act) or a specific Part (‘manage’ is defined in s 99 for the purposes of Part VIII of the SRC Act). Section 5 adopts those definitions for the purposes of this instrument.
8. ‘Former licensed authority’ and ‘former licensed corporation’ are defined for the purposes of this instrument. A note to the definition of ‘guarantee’ confirms that former licensed authorities and former licensed corporations are also captured in the definition of guarantee during the preservation period.

Section 6 – Entities and principal officers

9. Section 6 refers to Schedule 2 to this instrument which prescribes a number of ‘Entities’ and ‘principal officers’ for the purposes of the definitions of these terms in s 4(1) of the SRC Act. See also the notes in relation to Schedule 2 below for further discussion on the prescription of Entities and principal officers.

Section 7 – Forms of medical treatment

10. Section 7 expands the definition of ‘medical treatment’ in s 4(1) of the SRC Act. Where the requirements of the SRC Act are otherwise satisfied, an employee is eligible to receive compensation in respect of medical treatment obtained in relation to a compensable injury. Section 7 remakes s 17 of the 2002 Regulations with two updates.
11. The reference to ‘speech therapist’ now also includes a reference to ‘speech pathologist’. This is because, while both terms are used, ‘speech pathologist’ is now more commonly used in Australia.
12. The reference in the 2002 Regulations to persons ‘registered under the law of a State or Territory’ has been replaced with a reference to persons ‘registered by a national registration authority (within the meaning of s 8 of the *Healthcare Identifiers Act 2010*)’. These national registration authorities are established under laws of States and Territories, as set out by the Healthcare Identifiers Act and Regulations. This change has been made to recognise that registration of relevant healthcare professionals has been harmonised under the Healthcare Identifiers legislation.

Part 2—Compensation

13. Section 8 of the SRC Act deals with the calculation of an employee's 'normal weekly earnings'. After the initial calculation, an employee's 'normal weekly earnings' is also increased or reduced in accordance with the provisions of s 8. Part 2 of the Regulations prescribes the methods of calculating that indexation.

Section 8 – Prescribed index – further annual increase in normal weekly earnings after cessation of employment

Section 10 – Prescribed index – further annual increase in normal weekly earnings in certain other cases

14. Subsection 8(9B) of the SRC Act operates to periodically adjust normal weekly earnings by reference to a prescribed index after an employee is no longer employed by a scheme employer.
15. Subsections 8(9E) and 8(9F) of the SRC Act operate to periodically adjust normal weekly earnings by reference to a prescribed index. Subsection 8(9E) of the SRC Act operates to periodically increase normal weekly earnings on 1 July each year by reference to the index prescribed for s 8(9F) if there has been no increase under ss 8(6), (7) or (9) and no reduction under s 8(9) of the SRC Act in the past 12 months from 1 July.
16. Since 2008, the Wage Price Index has been the prescribed index for the purposes of ss 8(9D) and (9F) of the SRC Act. The WPI is also prescribed in s 13AA of the SRC Act for the purposes of indexing the death benefit compensation amounts in ss 17(3), (4) and (5) of the SRC Act.
17. The reference in ss 8 and 10 of this instrument has been updated to more accurately describe the WPI that is prescribed. However, it is the same WPI as that prescribed in the 2002 Regulations for the purposes of ss 8(9B) and (9F) of the SRC Act.
18. The WPI has been incorporated for the purposes of ss 8(9B) and (9F) of the SRC Act as calculated from time to time, as contemplated by those sections of the SRC Act, which refer to 'the percentage of increase (if any)... over the period of 12 months ending on the 31 December immediately before the relevant 1 July'.

Section 9 – Manner of calculating further annual increase – indexation after cessation of employment

Section 11– Manner of calculating further annual increase indexation in certain other cases

19. Subsection 8(9D) of the SRC Act permits the regulations to specify the manner of calculating the further increase referred to in s 8(9B) of the SRC Act.
20. Subsection 8(9G) of the SRC Act permits the regulations to specify the manner of calculating the further increase in normal weekly earnings for s 8(9F) of the SRC Act.
21. The Australian Bureau of Statistics publishes the change of the WPI for each quarter compared with that quarter a year ago. For example, the relevant percentage of change for the December Quarter 2017 compared with the December Quarter 2016 is published as 2.1%.

22. The manner of calculating the further increase to normal weekly earnings is prescribed by:

- s 9 for the purposes of s 8(9B) of the SRC Act; and
- s 11 for the purposes of s 8(9F) of the SRC Act

so that, where there is a percentage increase in the prescribed index between the December quarter of one year from the December quarter of the preceding year, the employee's normal weekly earnings should be increased by that percentage increase.

23. This method of calculating the increase for the purposes of ss 8(9B) and (9F) of the SRC Act maintains the formula prescribed in ss 6 and 6B of the 2002 Regulations, with some minor changes to terminology.

Part 3—Approved rehabilitation program providers

24. Under s 37 of the SRC Act, a rehabilitation authority which has made a determination that an employee should undertake a rehabilitation program can make arrangements with an approved program provider for that provider to provide a rehabilitation program for the employee.
25. The approval of a person as rehabilitation program provider is dealt with by Division 2 of Part III of the SRC Act.
26. Part 3 of this instrument prescribes certain things relating to approved rehabilitation program providers.

Section 12 – Renewal date

27. The renewal date determines the duration of an initial or renewed approval of a person as an approved program provider in accordance with ss 34G and 34M of the SRC Act. The renewal date also determines the date by which Comcare must publish any variation to Comcare’s operational standards for rehabilitation program providers under s 34E of the SRC Act.
28. The *Safety, Rehabilitation and Compensation Amendment (Renewal Date) Regulations 2018* amended the 2002 Regulations to extend the current renewal period for the approval of rehabilitation program providers under the SRC Act by one year, so the current renewal period will run for four years. This was to allow Comcare sufficient time to finalise its approval criteria and operational standards following the review of the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers.
29. That extension of the renewal period is preserved in s 12.
30. After 30 June 2020, each renewal period will revert to being three years.

Section 13 – application fee for initial rehabilitation program provider renewal

Section 14 – application fee for renewal of rehabilitation program provider approval

31. Subsection 34C(2) of the SRC Act provides that applications for initial approval must be accompanied by the prescribed fee for processing the application.
32. Subsection 34K(2) of the SRC Act provides that all applications for renewal must be accompanied by the prescribed fee for processing the application.
33. Sections 13 and 14 prescribe the application fees for the purposes of ss 34C(2) and 34K(2) of the SRC Act. The fees are identical to the application fees in the 2002 Regulations.

Part 4—Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims

34. Part 4 of the Regulations contains provisions dealing with applications for the grant of a licence and the suspension and revocation of licences for the purposes of Part VIII of the SRC Act.

Division 1—Application for grant of a licence

35. This Division deals with the form of, and information which must be included with, an application for a grant of licence.

Section 15 – Application for grant of a licence

36. Subsection 102(1)(a) of the SRC Act provides that an application for the grant of a licence must be in writing in the prescribed form.
37. Section 15 provides that any written form of application that contains:
- the particulars prescribed in s 16; and
 - the information and documents prescribed in s 17; and
 - a statement that the applicant certifies that the particulars and information provided are correct and that any copies of documents provided are true copies of the originals of those documents; and
 - provides for the application to be signed by:
 - if the applicant is a Commonwealth authority – the principal officer of the authority; or
 - if the applicant is an eligible corporation – the principal executive officer of the corporation;

is in the prescribed form, and constitutes an application.

Section 16 – Particulars to be included in licence application

38. Section 16 prescribes the particulars set out in the table in s 16 must be included in a licence application.
39. The particulars prescribed by s 16 reflect s 11 and Schedule 2 to the 2002 Regulations, apart from:
- the inclusion of the name of the applicant’s principal officer if the applicant is a Commonwealth authority or if the applicant is an eligible corporation the name of the corporation’s principal executive officer;
 - the removal of the requirement to include a facsimile number;
 - the inclusion of the requirement to include an email address;
 - the inclusion of the requirement to include the URL (that is, the Uniform Resource Locator) of any website operated by the applicant in relation to the applicant’s business or undertaking;

- the removal of the requirement to include the names and shareholdings of the 10 principal shareholders of the eligible corporation (or each shareholder, if there are fewer than 10 shareholders);
 - the inclusion of the requirement to include information on any parent guarantees or indemnities;
 - the inclusion of the requirement to provide details of the applicant's employees to whom the licence will apply; and
 - the scope of the licence.
40. These changes are made to ensure the Commission is provided with relevant information to be used when making a decision on a licence application. The information which is no longer required by the Regulations is information which may not be necessary for the Commission to consider in every case. Where the Commission considers that information which is not prescribed by ss 15-17 would assist it in making a decision regarding the licence application, the Commission is able to invite the eligible corporation to provide that information. The Commission would then be able to consider that information under ss 104(1)(b) or (c) of the SRC Act.

Section 17 – Information and documents required for licence application

41. Section 17 prescribes the information and documents set out in Schedule 1 to the Regulations that must be contained in or accompany a licence application. Some terms have been updated for clarity and to ensure consistency with modern drafting practices.
42. See the notes in relation to Schedule 1 below for further discussion of these requirements.

Division 2—Suspension and revocation of licences

43. The 2002 Regulations cover most matters that arise during a period when a licence is suspended, or following the revocation of a licence.
44. In addition to replicating those matters, Division 2 of the Regulations also deals with matters arising after a licence granted to a licensed corporation or licensed authority is revoked, including claims management, residual liabilities, regulatory activities and guarantees.

Subdivision A—Consequences of suspension or revocation of licence—licensed authorities

Section 18 – Purpose of this Subdivision

45. Section 18 makes clear that the Subdivision provides for the consequences of the suspension, or the revocation, of a licence held by a licensed authority.

Section 19 – Consequences of suspension of licence of licensed authority

46. Section 19 deals with the consequences of the suspension of the licence of a licensed authority under s 106(1)(a) of the SRC Act. It reflects s 13 of the 2002 Regulations,

- updated to incorporate new terminology in line with modern drafting practices. In particular, ‘licensee’ has been replaced with ‘licensed authority’ for greater clarity.
47. A licence can authorise a licensed authority to either accept liability and/or manage claims (ss 108, 108B of the SRC Act).
 48. Section 19(2) provides that if a licence authorising the licensed authority to accept liability is suspended, that liability would not be affected by the suspension. During the period of the suspension, Comcare is able to discharge such liabilities, and the licensed authority is required to pay Comcare the full amount of any such liability discharged, unless s 20 (which deals with money payable under a guarantee if the licence of a licensed authority is suspended) applied.
 49. If a licence authorising the licensed authority to accept responsibility to manage claims is suspended, during the period of the suspension, the licensed authority is prevented from managing those claims. Instead, Comcare is required to manage those claims in the name of the licensed authority. Section 19(3) sets out the obligations of the licensed authority and provides that Comcare is not liable to the licensed authority for any act or omission in managing those claims.
 50. Section 19 also makes clear that any costs incurred by Comcare in moving any claims from the licensed authority can be included by Comcare in the amount it determines to be the amount payable by the licensed authority to Comcare as costs incurred in transferring the claim.
 51. The note at the end of s 19 provides that, under s 15 of the *Safety, Rehabilitation and Compensation Directions 2019*, the Commission may suspend a licence held by a licensed authority, but may not suspend a licence held by a licensed corporation. It is intended that the *Safety, Rehabilitation and Compensation Directions 2019*, which will be made by the Minister under s 89D of the SRC Act, will commence immediately after this instrument.

Section 20 – Money payable under guarantee if licence of licensed authority suspended

52. Section 20 deals with money payable under a guarantee if the licence of a licensed authority is suspended and the Commission makes a demand for payment. It reflects s 13A of the 2002 Regulations, updated to incorporate new terminology in line with modern drafting practices.
53. The guarantee money is required to be paid to Comcare, and Comcare is then required to pay all guarantee money into a separate bank account until the money can be dealt with in accordance with the Regulations. Comcare is able to use the money to discharge a liability in respect of injury, loss or damage suffered by, or the death of an employee (s 19(2)(b)), meet a cost incurred in managing claims (s 19(3)(b)), or to reimburse itself if it has discharged a liability or met a cost of that kind without using guarantee money.
54. If, after the end of the period of the licence suspension, Comcare determines there are unlikely to be any further outgoings of guarantee money, and there is guarantee money remaining, Comcare is required to deal with that money in the way provided for by the

guarantee (s 20(6)), or if the guarantee does not make any provision about how the money is to be dealt with, in accordance with s 20(7).

Section 21 – Consequences of revocation of licence of licensed authority

55. Section 21 deals with the consequences of the revocation of licence of a licensed authority under s 106(1)(b) or s 107 of the SRC Act. It reflects s 14 of the 2002 Regulations, updated to incorporate new terminology in line with modern drafting practices.
56. In particular, the concept of the ‘final licence’ is introduced in s 21. The ‘final licence’ refers to the version of the licence which was held by the licensed authority immediately before the licence was revoked under s 106(1)(b) or s 107 of the SRC Act.
57. A licence can authorise a licensed authority to either accept liability and/or manage claims (ss 108 and 108B of the SRC Act).
58. Under s 21, if a licence authorising the licensed authority to accept liability under the SRC Act is revoked, the former licensed authority’s liabilities for payments in respect of any injury, loss or damage suffered by, or the death of, an employee would be dealt with in the following ways:
 - for injuries, etc., occurring on or after the day when the licence is revoked – the former licensed authority ceases to be liable; and
 - for injuries, etc., occurring before the licence was revoked – the former licensed authority remains liable, although Comcare may discharge those liabilities and the former licensed authority must pay Comcare the full amount of any such liability discharged, unless s 24 (which deals with money payable under a guarantee if the licence of a licensed authority is revoked) applies.
59. If a licence authorising the licensed authority to manage claims was revoked, the licensed authority is prevented from managing those claims. Instead, Comcare is required to manage those claims in the name of the licensed authority, and the former licensed authority has the obligations set out in s 21(3)(c) and (d).
60. Subsections 21(4) and (5) provide that actions done (including decisions made, and being party to certain proceedings) by the former licensed authority before the licence is revoked are taken to have been done by Comcare. This ensures Comcare can effectively take over the management of claims.
61. Section 21(6) provides that, subject to the section, the SRC Act continues to apply to the former licensed authority and its employees. Sections 21(7) and (8) provide that Comcare is liable for payments in respect of injury, loss or damage suffered by, or the death of, an employee of a former licensed authority on or after the date of revocation, and the former licensed authority is liable to pay premiums in respect of that liability.

Section 22 – Effect of revocation – former licensed authorities

62. Section 22 deals with matters arising after a licence granted to a licensed authority is revoked, including claims management, residual liabilities, regulatory activities and guarantees.

Safety, Rehabilitation and Compensation Regulations 2019 – Explanatory Statement

63. Section 22 introduces the concepts of the ‘preserved licence’ and the ‘preservation period’.
64. Section 22 provides that, during the preservation period, and despite the revocation of the licensed authority’s final licence (that is, the version of the licence which was in place immediately before the revocation):
- the scope and conditions of the licence that applied immediately before the licence was revoked are taken to be preserved for a specified period (the ‘preserved licence’);
 - the functions, powers, rights, obligations and liabilities of the former licensed authority under the SRC Act that applied in relation to the authority immediately before the revocation of the final licence continue to apply in relation to the authority;
 - the principal officer of the former licensed authority is taken to be the rehabilitation authority for the authority’s employees and ss 36, 37, 38, 39, 41 and 41A of the Act apply, unless Comcare arranges for another person to act as the rehabilitation authority for the corporation’s employees;
 - for the purposes of s 40 of the SRC Act, the former licensed authority is taken to be the relevant employer of the authority’s employees;
 - Comcare is taken to have the same functions and powers under the SRC Act in relation to: the preserved licence as if the preserved licence was a licence (including the power to determine and charge licence fees and regulatory contributions); and the former licensed authority as if the former licensed authority were a licensed authority; and
 - the Commission is taken to have the same functions and powers under the SRC Act in relation to: the preserved licence as if the preserved licence was a licence (including the power to vary the scope of the preserved licence under s 105 of the SRC Act, and vary the conditions of the preserved licence under s 108D(2) of the SRC Act); and the former licensed authority as if the former licensed authority were a licensed authority.
65. If the Commission varies the scope or conditions of the preserved licence, the Commission will be required under ss 18 or 19, as the case may be, of the *Safety, Rehabilitation and Compensation Directions 2019* to publish a notice in the *Gazette* or by notifiable instrument setting out the variation made to the scope or conditions of the preserved licence. It is intended that the *Safety, Rehabilitation and Compensation Directions 2019*, which will be made by the Minister under ss 89D of the SRC Act, will commence immediately after this instrument.

Section 23 – Commission to determine end of preservation period

66. During the preservation period, s 21 (which deals with claims management, residual liabilities, regulatory activities and bank guarantees after a licence granted to a licensed authority is revoked) applies in relation to the former licensed authority despite the revocation of the licence.

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67. In order to provide certainty regarding when the preservation period ends, s 23:
- requires the Commission to determine, in writing, the preservation period end day, if the former licensed authority made a written request for the Commission to do so; and
 - allows the Commission to make such a written determination on its own initiative; if
- the Commission is satisfied:
- the former licensed authority had no remaining liability (whether actual, contingent or prospective) to pay compensation or any other amount under the SRC Act in accordance with this section;
 - the principal officer of the former licensed authority had no remaining functions, obligations or responsibilities as a rehabilitation authority under the SRC Act in accordance with this section;
 - the former licensed authority had no remaining functions, obligations or responsibilities as a relevant employer under the SRC Act in accordance with this section.
68. However, the Commission is required to revoke the determination (thereby restoring the preservation period) if it becomes aware that one or more of the matters it was satisfied of was not true. If a declaration is revoked, it is taken to have never been made.
69. Sections 23(3) and 23(6) contain requirements for the Commission to notify the former licensed authority about a determination, or revocation of a determination.
70. Section s 23(5) permits a former licensed authority to make a further request that the Commission make a written determination under s 23(1) if the Commission revoked a determination it made under s 23(4).
71. For the avoidance of doubt, any determination or decision of the Commission made under s 23 is not a ‘determination’ for the purposes of s 60(1) of the SRC Act.

Section 24 – Money payable under guarantee if licence of licensed authority is revoked

72. Section 24 deals with money payable under a guarantee if the licence of a licensed authority is revoked and the Commission makes a demand for payment. It reflects s 14A of the 2002 Regulations, updated to incorporate new terminology in line with modern drafting practices.
73. The guarantee money is required to be paid to Comcare, and Comcare is required to pay all guarantee money into a separate bank account until the money can be dealt with in accordance with this instrument. Comcare is able to use the money to discharge a liability in respect of a claim (s 21(2)(b)), meet a cost incurred in managing claims (s 21(3)(d)), reimburse itself if it had discharged a liability or meet a cost of that kind without using guarantee money or reimburse itself for the cost of any arrangements made by it in relation to another person performing employer functions in relation to affected employees of the former licensed authority (s 25).

74. If Comcare determines there are unlikely to be any further outgoings of guarantee money, and there is guarantee money remaining, Comcare is required to deal with that money in the way provided for by the guarantee (s 24(7)), or if the guarantee does not make any provision about how the money is to be dealt with, in accordance with s 24(8).

Section 25 – Performance of employer functions by former licensed authority following revocation of licence

75. Section 25 allows Comcare, if it considers it would be appropriate to do so, to arrange for another person, in certain circumstances, to perform the functions of:
- acting as the rehabilitation authority for the employee;
 - acting as the relevant employer, within the meaning of s 40(2) of the SRC Act, of the employee;
 - acting for the former licensed authority in making:
 - a request for reconsideration of a determination under s 62(2)(c) of the SRC Act; or
 - an application for review of a reviewable decision under s 64(1)(c) of the SRC Act.
76. This section replicates s 14B of the 2002 Regulations, updated to incorporate new terminology in line with modern drafting practices.

Subdivision B Consequences of revocation of licence—licensed corporations

Section 26 – Purpose of this Subdivision

77. Section 26 makes clear that Subdivision B provides for the consequences of the revocation of a licence held by a licensed corporation.

Section 27 – Consequences of revocation of licence of licensed corporation

78. Section s 27 deals with the consequences of the revocation of licence of a licensed corporation under s 106(1)(b) or s 107 of the SRC Act. Section 27 reflects s 15 of the 2002 Regulations, updated to incorporate new terminology in line with modern drafting practices. References to ‘licensee’ and ‘eligible corporation’ have been replaced by references to ‘former licensed corporation’ for clarity. The concept of the ‘final licence’ has also been used. The ‘final licence’ refers to the version of the licence which was held by the licensed corporation immediately before the licence was revoked under s 106(1)(b) or s 107 of the SRC Act.
79. A licence can authorise a licensed corporation to either accept liability and/or manage claims (ss 108 and 108B of the SRC Act).
80. If a licence authorising the licensed corporation to accept liability under the SRC Act is revoked, the former licensed corporation’s liabilities for payments in respect of any injury, loss or damage suffered by, or the death of, an employee would be dealt with in the following ways:

- for injuries, etc., occurring on or after the day when the licence is revoked – the former licensed corporation would cease to be liable; and
 - for injuries, etc., occurring before the licence was revoked – the former licensed corporation would remain liable.
81. If a licence authorising the licensed corporation to manage claims is revoked, the former licensed corporation:
- is required to manage a claim under the SRC Act (regardless of when the claim is made) in respect of an injury, loss or damage suffered by, or the death of, an employee occurring before the revocation of the final licence as if the final licence had not been revoked; but
 - is not able to manage a claim under the SRC Act in respect of any injury, loss, damage or death occurring on or after the day of revocation of the final licence.
82. Section 27(3)(c) provides the former licensed corporation remains a party to proceedings in respect of any matter arising under the SRC Act that, on the day of revocation of the final licence, had not been completed.

Section 28 – Effect of revocation – former licensed corporations

83. Section 28 deals with matters arising after a licence granted to a licensed corporation is revoked, including claims management, residual liabilities, regulatory activities and guarantees.
84. Section 28 utilises the concepts of the ‘preserved licence’ and the ‘preservation period’.
85. Section 28 provides that, during the preservation period, and despite the revocation of the corporation’s final licence (that is, the version of the licence which was in place immediately before the revocation):
- the scope and conditions of the licence that applied immediately before the licence was revoked are taken to be preserved for a specified period (the ‘preserved licence’);
 - the functions, powers, rights, obligations and liabilities of the former licensed corporation under the SRC Act that applied in relation to the corporation immediately before the revocation of the final licence continue to apply in relation to the corporation;
 - the principal officer of the former licensed corporation is taken to be the rehabilitation authority for the corporation’s employees and ss 36, 37, 38, 39, 41 and 41A of the Act apply, unless Comcare arranges for another person to act as the rehabilitation authority for the corporation’s employees;
 - for the purposes of s 40 of the SRC Act, the former licensed corporation is taken to be the relevant employer of the corporation’s employees;
 - Comcare is taken to have the same functions and powers under the SRC Act in relation to: the preserved licence as if the preserved licence was a licence (including the power to determine and charge licence fees and regulatory

contributions); and the former licensed corporation as if the former licensed corporation were a licensed corporation; and

- the Commission is taken to have the same functions and powers under the SRC Act in relation to: the preserved licence as if the preserved licence was a licence (including the power to vary the scope of the preserved licence under s 105 of the SRC Act, and vary the conditions of the preserved licence under s 108D(2) of the SRC Act); and the former licensed corporation as if the former licensed corporation were a licensed corporation.

86. Section 28(3) provides that on and after the day the final licence is revoked, the SRC Act ceases to apply to the former licensed corporation and its employees, except as provided by Subdivision B. A note to s 28 points the reader to s 108A(7) of the SRC Act, which in effect ‘turns off’ the application of State and Territory workers’ compensation laws to a licensed corporation, for as long as that corporation is authorised to accept liability to pay compensation in respect of a particular injury, loss or damaged suffered by, or in respect of the death of, some or all of its employees.

Section 29 – Commission to determine end of preservation period

87. During the preservation period, s 28 (which deals with claims management, residual liabilities, regulatory activities and bank guarantees after a licence granted to a licensed corporation is revoked) applies in relation to the former licensed corporation despite the revocation of the licence.
88. In order to provide certainty regarding when the preservation period ends, s 29:
- requires the Commission to determine, in writing, the preservation period end day, if the former licensed corporation made a written request for the Commission to do so; and
 - allows the Commission to make such a written determination on its own initiative;

if the Commission is satisfied:

- the former licensed corporation has no remaining liability (whether actual, contingent or prospective) to pay compensation or any other amount under the SRC Act in accordance with this section;
 - the principal officer of the former licensed corporation has no remaining functions, obligations or responsibilities as a rehabilitation authority under the SRC Act in accordance with this section;
 - the former licensed corporation has no remaining functions, obligations or responsibilities as a relevant employer under the SRC Act in accordance with this section.
89. However, the Commission is required to revoke the determination (thereby restoring the preservation period) if it becomes aware that one or more of the matters it was satisfied of was not true. If a declaration is revoked, it is taken to have never been made.

90. Sections 29(3) and 29(6) contain requirements for the Commission to notify the former licensed corporation about a determination, or revocation of a determination.
91. Section 29(5) permits a former licensed corporation to make a further request that the Commission make a written determination under s 29(1) if the Commission revokes a determination it made under s 29(4).
92. For the avoidance of doubt, any determination or decision of the Commission made under s 29 is not a ‘determination’ for the purposes of s 60(1) of the SRC Act.

Section 30 – Money payable under guarantee if licence of licensed corporation is revoked

93. Section 30 deals with money payable under a guarantee if the licence of a licensed corporation was revoked and the Commission made a demand for payment. It reflects s 15A of the 2002 Regulations, updated to incorporate new terminology in line with modern drafting practices.
94. The guarantee money is required to be paid to Comcare, which is required to pay all guarantee money into a separate bank account until the money can be dealt with in accordance with this instrument.
95. Section 30(5) permits Comcare to take from the guarantee money any amounts needed to:
- discharge any liability for payments in respect of injury, loss or damage suffered by, or the death of an employee occurring before the final licence was revoked, being a liability that Comcare decided to discharge;
 - to meet claims management costs, for any claims mentioned in s 27(3)(a) that Comcare decided to manage or arrange to be managed, that were not paid directly to Comcare by the former licensed corporation; and
 - to enable Comcare to meet the cost of any arrangement mentioned in s 31(1) that Comcare decided to make.
96. If Comcare receives an actuarial report assessing the total value of any amounts needed for a purpose mentioned in s 30(5)(a) that are likely to become payable in the future, Comcare is also permitted to take from the guarantee money an amount equal to that assessment.
97. If Comcare determines there are unlikely to be any further outgoings of guarantee money, and there is guarantee money remaining, Comcare is required to deal with that money in the way provided for by the guarantee (s 30(6)), or if the guarantee does not make any provision about how the money is to be dealt with, in accordance with s 30(7).
98. Subsections 30(8)-(11) deals with the management of claims after the licence of a licensed corporation is revoked. A ‘relevant claim’ is a claim under s 27(3)(a) – that is, a claim that the former licensed corporation must manage under the SRC Act (regardless of when the claim is made) in respect of an injury, loss or damage suffered by, or the death of, an employee occurring before the revocation of the final licence.
99. Section 30(8) permits Comcare to manage a relevant claim, or to arrange for some or all relevant claims to be managed by another person.

100. Sections 30(9) and (10) set out what is a ‘claim management cost’, which s 30(5) permits Comcare to take from the guarantee money.
101. Section 30(11) sets out a former licensed corporation’s obligation to provide claims and other information to Comcare.

Section 31 – Performance of employer functions by former licensed corporation following revocation of licence

102. Section 31 allows Comcare, if it considers it would be appropriate to do so, to arrange for another person, in certain circumstances, to perform the functions of:
- acting as the rehabilitation authority for the employee;
 - acting as the relevant employer, within the meaning of s 40(2) of the SRC Act, of the employee.
103. This section replicates s 15B of the 2002 Regulations.

Subdivision C—Compensation for acquisition of property

Section 32 – Compensation for acquisition of property

104. This is a standard provision with the effect that if the payment of money by Comcare under ss 20(6) or (7) or 24(7) or (8) or 30(6) or (7) (that is, that deal with the payment of remaining guarantee money) resulted in the acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
105. Section 32 also permits a person to institute proceedings in the Federal Court of Australia or the Supreme Court of a State or Territory, if the person and the Commonwealth do not agree on the amount of compensation.
106. Section 32 is made under s 122 of the SRC Act, being a matter necessary or convenient to be prescribed for carrying out or giving effect to the SRC Act.

Part 5—Application, transitional and savings provisions

Division 1—Provisions for this instrument as originally made

Section 33 – Definitions

107. Section 33 contains definitions for the purposes of Division 1 of Part 5, which contains provisions for this instrument as originally made.

Section 34 – Pre-commence applications for grant of a licence

108. Where an eligible applicant made an application for the grant of a licence before this instrument commenced, but a decision on that application had not been made when this instrument commenced, Part 4 and Schedules 1, 2 and 3 of the 2002 Regulations continue to apply in relation to the application as though the 2002 Regulations had not been repealed by this instrument.

Section 35 – Suspension and revocation of licences

109. Despite Schedule 3 to this instrument repealing the 2002 Regulations, Part 5 of the 2002 Regulations (which deals with the suspension and revocation of licences), continues to apply in relation to a licence which was suspended or revoked before the commencement of this instrument.

Schedule 1—Information and documents for licence applications

110. Section 17 provides that the information and documents set out in Schedule 1 must accompany a licence application as indicated below.
111. Schedule 1 reflects Schedule 3 of the 2002 Regulations, with some changes.
112. This instrument replaces references to a ‘copy of a policy’ with broader terminology to provide more flexibility to allow an applicant to provide a wider range of documents and material to demonstrate their arrangements. For example, ‘a copy of the applicant’s rehabilitation policy (if any)’ has been replaced with ‘evidence of the applicant’s rehabilitation policy’. This broader wording is intended to include not only a policy document, but also documents outlining the policy, framework or governance arrangements relevant to the item. These changes have been made in item 9 in Part 3 (relating to rehabilitation); item 15 in Part 4 (relating to work health and safety) and item 36(b) in Part 7 (relating to personal information).

Information and documents required for all applications

113. The information and documents set out in Parts 1, 2, 3 and 4 of the table in Schedule 1 are required.
114. These Parts deal with:
- finance and insurance of the applicant (Part 1);
 - consultation undertaken by the applicant (Part 2);
 - the applicant’s proposed and existing rehabilitation management arrangements and performance (Part 3); and
 - the applicant’s preventative measures and work health and safety management systems (Part 4).
115. Item 5(b) in Part 1 to Schedule 1 requires a statement by the directors or members of the applicant’s governing body (if any) or by the applicant’s principal officer regarding the applicant’s suitability to hold a licence. The reference to the principal officer in this item is a reference to:
- if the applicant is a Commonwealth authority—the principal officer (as defined in s 4(1) of the SRC Act) of the authority; or
 - if the applicant is an eligible corporation—the principal executive officer of the corporation.
116. Item 17 in Part 4 to Schedule 1 requires licence applicants to provide details of every notifiable incident, compliance action and conviction under the *Work Health and Safety Act 2011* or a corresponding WHS law in relation to the applicant’s business or undertaking occurring in the five years preceding and including the date of the application. The purpose of this provision is to ensure the Commission possesses the relevant information it requires to assess a licence application. The Commission may provide guidance as to the type of details it requires. Generally, providing a copy of the notifiable incident, compliance action or conviction documents would suffice, but

the Commission may request further specific information from the applicant, if required. Examples of compliance action include:

- improvement notices;
- prohibition notices;
- enforceable undertakings; and
- prosecutions.

Information and documents additionally required for an application for a licence to accept liability

117. If the application is for a licence which would authorise the licensee to accept liability, the application also needs to be accompanied by information or documents relating to the applicant's proposed arrangements to secure liabilities (Part 5).

Information and documents additionally required for an application in relation to only some of the applicant's employees

118. If the application is for a licence in relation to only some of the applicant's employees, the application also needs to be accompanied by information or documents relating to the staff (that is, employees in the ordinary sense) to whom the licence would relate (Part 6).

Information and documents additionally required if the applicant would be responsible for managing claims

119. If the application is for a licence which would include responsibility for managing claims for employees, the application also needs to be accompanied by information or documents relating to the applicant's proposed claims management and benefit delivery arrangements (Part 7).

Information and documents additionally required for an application by a Commonwealth authority

120. If the application is made by a Commonwealth authority, s 17(e) also requires the application to be accompanied by details of the Commonwealth authority's consultation with the Minister responsible for the authority about the applicant's intention to apply for a licence.

Schedule 2—Entities and principal officers

121. Schedule 2 prescribes Entities for the purposes of paragraph (c) of the definition of ‘Entity’ in s 4(1) of the SRC Act. It also prescribes the principal officer of each of those prescribed entities for the purposes of paragraph (c) of the definition of ‘principal officer in relation to an ‘Entity’ in s 4(1) of the SRC Act.
122. Commonwealth authorities and Entities pay premiums and regulatory contributions to Comcare under the SRC Act.
123. The ‘principal officer’, in relation to an Entity, has functions and can exercise powers of the rehabilitation authority in respect of employees of the Entity.
124. The Entities and principal officers prescribed by Schedule 2 are currently prescribed as Entities and principal officers by the 2002 Regulations. No new Entities or principal officers have been added.
125. This instrument omits four current Entities and their principal officers (the Commonwealth Bureau of Meteorology, the Murray Darling Basin Commission, the National Archives of Australia and the Australian Civilian Corps) from the definition of ‘Entity’. This is because these bodies are otherwise already captured by the SRC Act as either Commonwealth authorities, or Entities within paragraphs (a) or (b) of the definition of ‘Entity’ in s 4(1) of the SRC Act.
126. The method of referring to Entities has been updated to provide greater clarity as to the identity and composition of the Entities.

Schedule 3—Repeals

127. Schedule 3 repeals the 2002 Regulations.

Statement of Compatibility with Human Rights

Issued by the Minister for Jobs and Industrial Relations

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

Safety, Rehabilitation and Compensation Regulations 2019

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.

Section 122 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Safety, Rehabilitation and Compensation Regulations 2002* (2002 Regulations) will sunset on 1 October 2019. The new *Safety, Rehabilitation and Compensation Regulations 2019* (Regulations) remake the 2002 Regulations in line with modern drafting practices. The Regulations substantially remake the 2002 Regulations and include some updates as well as minor amendments for clarity and to ensure consistency with modern drafting practices. Changes made by the Regulations include:

- prescribing speech pathologists in addition to speech therapists in the definition of 'medical treatment', because while both terms are used, 'speech pathologist' is now more commonly used in Australia;
- replacing the reference to persons registered under the law of a State or Territory with a reference to persons registered by a national registration authority within the meaning of s 8 of the Healthcare Identifiers Act 2010, as registration of relevant healthcare professionals has been harmonised under the Healthcare Identifiers legislation;
- updating the information required to accompany an application for grant of a licence, to ensure the Safety, Rehabilitation and Compensation Commission (the Commission) is provided with all relevant information it requires to consider the application;
- introducing the concept of the 'final licence', which refers to the version of the licence which was held by the licensee immediately before the licence was revoked;
- introducing the concepts of the 'preserved licence' and the 'preservation period' in relation to a licence which is revoked. The preservation period starts on the day a licence is revoked and ends when there are no remaining liability, functions, obligations or responsibilities under the SRC Act. The preserved licence would

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preserve the functions, powers, rights, obligations and liabilities of Comcare, the Commission and the former licensee during the preservation period;

- removing bodies from the list of Entities for the purposes of the SRC Act, where the relevant body either has ceased to exist, or is otherwise captured under the SRC Act.

The purpose of this instrument is to deal with the following matters within the context of the workers' compensation scheme established by the SRC Act:

- the indexation and calculation of an employee's normal weekly earnings;
- the renewal dates and application fees for the approval and renewal of rehabilitation program providers;
- application requirements for the grant of a licence to accept liability and/or manage claims;
- the consequences of the suspension and revocation of a licence to accept liability and/or manage claims;
- matters prescribed for the purposes of the SRC Act, including Entities and principal officers to be covered by the SRC Act.

Human rights implications

These Regulations engage the right to social security as set out in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 9 of the ICESCR 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. This instrument protects the right to social security by regulating the provisions under the SRC Act for rehabilitation, compensation and other benefits to, or in respect of, injured employees.

Definition of medical treatment (section 7)

The Regulations expand the definition of 'medical treatment' under s 4(1) of the SRC Act. Where the requirements of the SRC Act are otherwise satisfied, an employee is eligible to receive compensation in respect of 'medical treatment' obtained in relation to a compensable injury. The reference to 'speech therapist' in the expanded definition of medical treatment under the Regulations now also includes a reference to 'speech pathologist'. This is because, while both terms are used, 'speech pathologist' is now more commonly used in Australia. This amendment makes clear that a person who otherwise would be eligible for compensation for medical treatment from a speech therapist is also eligible for compensation for medical treatment from a speech pathologist, which promotes the right to social security

¹ 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].

through the provision of medical costs for employees for injuries occurring as a result of their employment.

Indexation (Part 2)

Section 8 of the SRC Act deals with the calculation of an employee's 'normal weekly earnings' (NWE). An employee's NWE is used as the basis of calculating the amount of weekly incapacity payments which the employee is entitled to receive. After the initial calculation of an employee's NWE, an employee's NWE is also increased or reduced in accordance with s 8 of the SRC Act. Part 2 of the Regulations prescribes the methods of calculating annual increases to an employee's NWE in certain circumstances. Sections 8 and 10 of the Regulations prescribe that these increases should be made with reference to the Wage Price Index (WPI). The WPI measures changes in the price of labour in the Australian labour market. Sections 9 and 11 of the Regulations operate so that, where there is a percentage increase in the WPI between the December quarter of one year from the December quarter of the preceding year, the employee's NWE should be increased by that percentage increase. This ensures that where an employee is no longer employed by a scheme employer, or where no other increases to the employee's NWE have been effected by the operation of s 8 of the SRC Act, the amount of an employee's NWE keeps pace with WPI, which promotes the right to social security through the payment of wages to employees for injuries occurring as a result of their employment.

Consequences and effect of revocation of licence – former licensed authorities and former licensed corporations (Division 2 of Part 4)

Part VIII of the SRC Act provides for certain corporations and Commonwealth authorities to be issued with a licence to accept liability in respect of employee's workers' compensation claims and/or manage those claims. This is colloquially known as a licence to self-insure.

An employee of a licensed corporation or licensed authority who suffers a compensable injury has entitlements (such as weekly incapacity payments and compensation for the cost of medical treatment) under the SRC Act.

A licence granted under Part VIII to self-insure can be revoked under the SRC Act in certain circumstances, either at the instance of the Commission or at the request of the licensee.

The Regulations operate to ensure that where a licence is revoked (either at the instance of the Commission or at the request of the licensee), arrangements are in place to govern the claims management and liability in respect of injury, loss or damage suffered by, or the death of any of the former licensee's employees which occurred before the revocation. This ensures continuity of workers' compensation and rehabilitation entitlements to these employees and so promotes the right to social security, including the right to workers' compensation and social insurance.

Consequences of suspension of licence of licensed authority

A licence granted to a licensed authority under Part VIII of the SRC Act to self-insure may also be suspended under the SRC Act in certain circumstances. (*The Safety, Rehabilitation*

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and Compensation Directions 2019 operate to prevent the Commission from suspending the licence of a licensed corporation.)

Sections 19 and 20 deal with the consequences of the suspension of licence of a licensed authority to ensure that where such a licence is suspended, arrangements are in place to govern the claims management and liability in respect of injury, loss or damage suffered by, or the death of any of the licensed authority's employees during the period of that suspension.

This ensures continuity of workers' compensation and rehabilitation entitlements to these employees and so promotes the right to social security, including the right to workers' compensation and social insurance.

Conclusion

This legislative instrument is compatible with human rights because it promotes the protection of human rights.