

## EXPLANATORY STATEMENT

Issued by Comcare

Notice of a Disallowable Instrument

*Safety, Rehabilitation and Compensation Act 1988 (the Act)*

### ***Approved form for application for initial approval of a person as rehabilitation program provider***

#### **Authority**

Under section 34S of the Act, Comcare is authorised to approve a form for application for approval of a person as a rehabilitation program provider.

#### **Purpose**

The purpose of the 'Approval form for application for initial approval of a person as a rehabilitation program provider' is to approve the form to seek initial approval as a rehabilitation program provider under the Act, and it is to apply from 1 January 2020.

The form collects information needed to assess whether the applicant is suitable to be approved as a rehabilitation program provider under the Act. The reason for issuing a new initial application form is to ensure that the content and submissions align with the new *Criteria for Rehabilitation Program Providers 2020 (the Criteria)* and *Operational Standards for Rehabilitation Program Providers 2020 (the Operational Standards)* and Comcare's revised workplace rehabilitation provider approval framework.

An employer under the Act has the responsibility and authority for providing rehabilitation and managing injured employees' return to work. Employers can refer an employee to a Comcare approved rehabilitation program provider to assist with the development and implementation of rehabilitation programs. Only providers approved by Comcare under Part III, Division 2 of the Act may be engaged to deliver services in the Comcare scheme.

Section 34S of the SRC Act authorises Comcare to approve the form for application for initial approval as a rehabilitation program provider. The form is a legislative instrument for the purposes of the *Legislation Act 2003 (the LA)*.

Applications to Comcare for initial approval must be made using the new approved initial application form and will be assessed against the Criteria and Operational Standards Applications made before 1 July 2020 will also be assessed against the operational standards contained in Division 2 of Part 1 of the *Criteria and Operational Standards for Workplace Rehabilitation provider 2015 (Criteria and Operational standards 2015)*.

The changes to the form are minor in nature and focus on obtaining evidence to establish that the applicant meets the criteria and is likely to be able to comply with the new operational standards.

#### **Consultation**

Before the instrument was made, Comcare was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

On 1 August 2019, Comcare published the draft Criteria, Operational Standards, and draft Conditions of Approval and an accompanying guidance note, on its website. Key stakeholders were invited to provide comment including Comcare approved Workplace Rehabilitation Providers, the Australian

Rehabilitation Providers Association, Rehabilitation Authorities (Australian Government Agencies and Licensees) and the Australian Council of Trade Unions.

Consultation closed on 19 August 2019 and Comcare received 6 responses that affirmed the approach taken with the revision of the instruments. The responses will also be used as an input to the supporting information published on the Criteria and Operational Standards.

This initial application form collects information necessary to assess applicants against the Criteria and Operational Standards.

### **Regulatory Impact Statement**

The Office of Best Practice Regulation (OBPR) has advised that this instrument does not require a Regulation Impact Statement (RIS) (OBPR ID 25227).

## **Statement of Compatibility with Human Rights**

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

### **Approval form for application for renewal of a person as rehabilitation program provider**

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* (**the HR Act**) requires a statement of compatibility with human rights to be prepared in relation to this legislative instrument and paragraph 15J(2)(f) of the LA requires that it be included in the explanatory statement.

This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the HR Act.

### **Overview of the Legislative Instrument**

This instrument is made under section 34S of the *Safety, Rehabilitation and Compensation Act 1988* (**the SRC Act**).

The purpose of this Instrument is to approve the format in which applicants will provide the information required by Comcare to assess whether the applicant is suitable to be approved as a rehabilitation program provider. The reason for issuing a new application form is to ensure that the content and submission align with the new Criteria and Operational Standards for Rehabilitation Program Providers 2020.

This Legislative Instrument will affect individuals, partnerships and companies (and their employees) applying to be approved as rehabilitation program provider.

### **Human rights implications**

This Instrument approves the format in which Comcare collects the information required to make a determination under section 34F of the SRC Act.

The criteria and operational standards relevant to a decision under section 34F of the SRC Act are set out in the Criteria and Operational Standards for Workplace Rehabilitation Providers 2020. Any applicable rights or freedoms engaged by those criteria and operational standards are considered in the human rights compatibility statement for those legislative instruments.

This Instrument specifically engages the right to privacy and reputation.

Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR) prohibits unlawful or arbitrary interference with a person's privacy, family, home and correspondence. The right to privacy is not an absolute right, and limitations are permissible.

The Instrument engages the right to privacy by requiring the collection of personal information. The collected information includes the qualifications and experience of individuals employed or otherwise engaged by the applicant. If the applicant is an individual the Instrument requires the collection of information relating to the individual's financial solvency.

The ability to collect information to assess compliance with the Criteria and Operational Standards is reasonable, necessary and proportionate, as all personal information will be lawfully collected in accordance with the *Privacy Act 1988* (Cth), and it is reasonably necessary for and directly related to Comcare's functions and powers under Part III of the SRC Act. Comcare does not collect any unnecessary or sensitive personal information and all personal information collected is required for Comcare to perform its function in assessing applications for approval as a rehabilitation program provider.

***Conclusion***

The Legislative Instrument is compatible with human rights because it promotes human rights, and to the extent that it may limit human rights those limitations are reasonable, necessary and proportionate.