

**SAFETY, REHABILITATION AND COMPENSATION (LICENCE ELIGIBILITY –
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED)
DECLARATION 2020**

EXPLANATORY STATEMENT

Issued by authority of the Minister for Industrial Relations
under section 100 of the *Safety, Rehabilitation and Compensation Act 1988*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Safety, Rehabilitation and Compensation Act 1988* (the Act) establishes the Commonwealth workers' compensation and rehabilitation scheme.

Under Part VIII of the Act, an 'eligible corporation' may apply to the Safety, Rehabilitation and Compensation Commission (the Commission) for a licence to:

- (a) accept liability to pay workers' compensation in respect of its employees in accordance with the Act; and
- (b) manage the claims of its employees in accordance with the Act.

An 'eligible corporation' is a corporation that has been declared to be such by the Minister for Industrial Relations under subsection 100(1) of the Act. Subsection 100(1) of the Act provides that if the Minister is satisfied that it would be desirable for the Act to apply to employees of a corporation that:

- (a) is, but is about to cease to be, a Commonwealth authority; or
- (b) was previously a Commonwealth authority; or
- (c) is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority;

the Minister may, by legislative instrument, declare the corporation to be eligible to be granted a licence under Part VIII of the Act.

Australia and New Zealand Banking Group Limited (ACN 005 357 522; ABN 11 005 357 522) (Australia and New Zealand Banking Group) is a corporation carrying on business in competition with a former Commonwealth authority, being the Commonwealth Bank of Australia. Australia and New Zealand Banking Group has requested that the Minister declare it to be an eligible corporation under subsection 100(1) of the Act.

Applications for declarations under subsection 100(1) of the Act are assessed against the following principles, which are set out in the Minister's Guidelines for assessing applications for a declaration of eligibility for a self-insurance licence:

- (a) the likely impact on the integrity of the Commonwealth workers' compensation scheme;
- (b) the likely impact on the operations of the state and territory workers' compensation schemes; and
- (c) the scope of the corporation's operations across jurisdictions (based on a minimum threshold of two jurisdictions).

The Minister's Guidelines are available free of charge on the Attorney-General's Department website: <http://www.ag.gov.au/>

Having assessed the application against the principles, the Minister is satisfied that it would be desirable for the Act to apply to the employees of Australia and New Zealand Banking Group.

The Safety, Rehabilitation and Compensation (Licence Eligibility—Australia and New Zealand Banking Group Limited) Declaration 2020 (the Declaration) provides that Australia and New Zealand Banking Group is eligible to be granted a licence under Part VIII of the Act.

If the Commission subsequently grants an eligible corporation a licence that authorises that corporation to accept liability to pay compensation and other amounts under the Act in respect of a particular injury, loss or damage suffered by, or in respect of the death of, some or all of its employees after that licence comes into force, state and territory workers' compensation legislation will cease to apply to that corporation in respect of such injury, loss, damage or death from the date the licence comes into force. Any liability or obligation incurred by the corporation under a state or territory law in relation to the injury or death of an employee, or any loss or damage suffered by an employee, before the licence comes into force is not affected.

CONSULTATION

Consultation was undertaken with Comcare. Wider consultation was not undertaken as the Declaration was made at the request of Australia and New Zealand Banking Group, and the effect of the Declaration is to allow Australia and New Zealand Banking Group to make an application for the grant of a licence. Any application for a grant of a licence will be made by Australia and New Zealand Banking Group to the Commission under section 102 of the Act. The Commission, which will decide whether to grant the licence, includes a Chairperson; a member who represents the Commonwealth and Commonwealth authorities; three members nominated by the Australian Council of Trade Unions; a member who, in the Minister's opinion, represents licensees; the Chief Executive Officer of Safe Work Australia; a member who represents the interests of the Australian Capital Territory's public sector employees and two members with qualifications or experience relevant to the Commission's functions, or the exercise of its powers.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for instruments made under subsection 100(1) of the Act (OBPR ID number 23425).

The Declaration is a legislative instrument for the purposes of the *Legislation Act 2003*. The Declaration takes effect on the day after it is registered on the Federal Register of Legislation.

The Declaration is self-repealed twenty four months after its commencement. A section 100 declaration that Australia and New Zealand Banking Group is an 'eligible corporation' is made on the basis of relevant information available to the Minister at the time of the decision, and such a declaration should not be valid indefinitely. The self-repeal provision allows Australia and New Zealand Banking Group twenty four months from the commencement of the Declaration to apply to the Commission for the grant of a licence under section 102 of the Act and to have the licence granted by the Commission under section 103 of the Act. If that timeframe is not met, the Minister would need to make a new declaration under section 100 of the Act in order for Australia and New Zealand Banking Group to once more be an eligible corporation for the purposes of the Act.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Safety, Rehabilitation and Compensation (Licence Eligibility—Australia and New Zealand Banking Group Limited) Declaration 2020

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Safety, Rehabilitation and Compensation (Licence Eligibility—Australia and New Zealand Banking Group Limited) Declaration 2020 (the Declaration) is made in accordance with subsection 100(1) of the *Safety, Rehabilitation and Compensation Act 1988* (the Act). The Act establishes the Commonwealth workers' compensation and rehabilitation scheme.

Under Part VIII of the Act, an 'eligible corporation' may apply to the Safety, Rehabilitation and Compensation Commission (the Commission) for a licence to:

- (a) accept liability to pay workers' compensation in respect of its employees in accordance with the Act; and
- (b) manage the claims of its employees in accordance with the Act.

An 'eligible corporation' is a corporation that has been declared to be such by the Minister for Industrial Relations under subsection 100(1) of the Act.

If the Minister makes a declaration that a corporation is an eligible corporation under subsection 100(1), then the Commission may, on application made in accordance with section 102 of the Act, grant the eligible corporation a licence for a specified period. If a licence is granted, the Commonwealth workers' compensation scheme, as established by the Act, will apply to the eligible corporation from the date the licence comes into force. Any liability or obligation incurred by the corporation under a state or territory law in relation to the injury or death of an employee, or any loss or damage suffered by an employee, before the licence comes into force is not affected.

Declaration of Australia and New Zealand Banking Group as an 'eligible corporation'

The Declaration has the result that Australia and New Zealand Banking Group Limited (ACN 005 357 522; ABN 11 005 357 522) (Australia and New Zealand Banking Group) is eligible to be granted a licence under Part VIII of the Act. A licence will only be granted if the Commission is satisfied that it is appropriate to do so.

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 sets out the essential elements of the right to social security, including that 'States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work'.¹

Workers' compensation legislation ensures the protection of injured workers by way of compensation payments, payment of medical expenses, permanent impairment benefits and other benefits, such as

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].

access to rehabilitation support. Workers' compensation is generally available instead of the right of employees to sue their employer for these costs. In Australia, there are separate but largely comparable workers' compensation jurisdictions in the Commonwealth, state and territory jurisdictions.

The effect of the Declaration is that Australia and New Zealand Banking Group is eligible to make an application to the Commission to be granted a licence. Members of the Commission include three members nominated by the Australian Council of Trade Unions; a member who, in the Minister's opinion, represents licensees; the Chief Executive Officer of Safe Work Australia; and two members with qualifications or experience relevant to the Commission's functions, or the exercise of its powers.

Once this declaration is made, if Australia and New Zealand Banking Group makes an application for the grant of a licence to the Commission under section 102 of the Act, the Commission may grant the licence. In order to grant Australia and New Zealand Banking Group a licence, the Commission will be required to consider if it is appropriate to grant Australia and New Zealand Banking Group a licence. To be satisfied that it is appropriate to grant Australia and New Zealand Banking Group a licence, the Commission must be satisfied, among other things, that Australia and New Zealand Banking Group has sufficient resources to fulfil the responsibilities imposed on it under the licence, has the capacity to meet the Commission's standards for the rehabilitation and work health and safety of Australia and New Zealand Banking Group employees, and that the grant of the licence will not be contrary to the interests of Australia and New Zealand Banking Group employees (section 104 of the Act).

The Declaration engages but does not limit human rights. Its effect is that it allows Australia and New Zealand Banking Group to make an application for the grant of a licence, to be considered by the Commission. As a result, making the Declaration does not affect the workers' compensation rights of Australia and New Zealand Banking Group employees and so does not limit the right to social security.

Conclusion

The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Christian Porter MP

Attorney-General and Minister for Industrial Relations

NOTES ON SECTIONS

Section 1 – Name

Section 1 provides that the title of the instrument is the *Safety, Rehabilitation and Compensation (Licence Eligibility—Australia and New Zealand Banking Group Limited) Declaration 2020*.

Section 2 – Commencement

Section 2 provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the instrument is made under section 100 of the *Safety, Rehabilitation and Compensation Act 1988*.

Section 4 – Definitions

Section 4 provides the definitions of terms used in the instrument.

Section 5 – Declaration

Section 5 provides that, being satisfied that it would be desirable for the *Safety, Rehabilitation and Compensation Act 1988* to apply to employees of Australia and New Zealand Banking Group Limited, the Minister declares that Australia and New Zealand Banking Group Limited is eligible to be granted a licence under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988*.

Section 6 – Repeal

Section 6 provides that the instrument is repealed the day after the end of the period of 24 months beginning on the day the instrument commences.