

## **SAFETY, REHABILITATION AND COMPENSATION**

### **(WEEKLY INTEREST ON THE LUMP SUM) INSTRUMENT 2021**

#### **EXPLANATORY STATEMENT**

Issued by authority of the Minister for Industrial Relations

under subsection 21(5) of the *Safety, Rehabilitation and Compensation Act 1988*

#### **PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) establishes the Commonwealth workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations.

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

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

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

Pursuant to subsection 21(5) of the SRC Act, this instrument specifies the rate which is used for the purposes of the definition of 'weekly interest on the lump sum' in subsections 21(3) and 21A(3) of the SRC Act in the period from 1 July 2021 to 30 June 2022.

This rate has been derived by obtaining the daily 10-year Government Bond rates from the Reserve Bank of Australia, averaging them for the period 1 April 2020 to 31 March 2021 and rounding to two decimal places. Over this period, the average 10-year Government Bond rate has been calculated to be 1.01 per cent.

Accordingly, the instrument specifies a rate of 1.01 per cent for the period 1 July 2021 to 30 June 2022.

To maintain a central record of the rates specified in previous years, Attachment B to this explanatory statement includes a list of all rates specified by previous legislative instruments pursuant to subsection 21(5) of the SRC Act.

## CONSULTATION

Consultation was undertaken with Comcare in relation to this instrument. Wider consultation was not undertaken because routine specification of the interest rate has been determined in accordance with a well-established method, the Government Bond rates, for a number of years. This method of calculating the weekly interest rate has been applied consistently throughout that period and stakeholders are aware of the methodology.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### **Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Instrument 2021**

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 Act 1988* (SRC Act) establishes the Commonwealth workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations.

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

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

Pursuant to subsection 21(5) of the SRC Act, this instrument specifies the rate which is used for the purposes of the definition of 'weekly interest on the lump sum' in subsections 21(3) and 21A(3) of the SRC Act in the period from 1 July 2021 to 30 June 2022.

This rate has been derived by obtaining the daily 10-year Government Bond rates from the Reserve Bank of Australia, averaging them for the period 1 April 2020 to 31 March 2021 and rounding to two decimal places. Over this period, the average 10-year Government Bond rate has been calculated to be 1.01 per cent.

#### **Human rights implications**

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* provides for the right of every one to social security, including social insurance. General Comment 19 by the Committee on Economic, Social and Cultural Rights elaborates on Article 9, stating that the 'States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work'.<sup>1</sup>

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<sup>1</sup> Committee on Economic, Social and Cultural Rights, *General Comment 19: The Right to Social Security (art. 9)*, U.N. Doc E/C.12/GC/19 (2008), [17].

Workers' compensation is analogous to social insurance in that it provides payment of wages and medical costs to employees for injuries occurring as a result of their employment.

The calculation of the rate of the weekly interest on the lump sum has been determined in accordance with a well-established method, the Government Bond rates. This method has been used to determine the rate of the weekly interest on the lump sum for the purposes of subsection 21(5) of the SRC Act for the past 12 years and conservatively reflects interest rates able to be earned on long term investments.

### **Conclusion**

This legislative instrument is compatible with human rights because it does not raise any human rights issues.

**Senator the Hon Michaelia Cash**

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 (Weekly Interest on the Lump Sum) Instrument 2021*.

### **Section 2 – Commencement**

Section 2 provides that the instrument commences on 1 July 2021.

### **Section 3 – Authority**

Section 3 provides that the instrument is made under subsection 21(5) of the *Safety, Rehabilitation and Compensation Act 1988*.

### **Section 4 – Definitions**

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

### **Section 5 – Schedule**

Section 5 provides that each instrument that is specified in the Schedule to the instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

### **Section 6 – Specified rate**

Section 6 provides that for the purposes of the definition of the *weekly interest on the lump sum* in subsections 21(3) and 21A(3) of the *Safety, Rehabilitation and Compensation Act 1988*, the rate of 1.01 per cent per annum is specified for the period from 1 July 2021 to 30 June 2022.

### **Schedule 1 – Repeals**

Schedule 1 to the instrument repeals the *Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Instrument 2020* in its entirety.

### Prior Specifications

Prior to the commencement of this instrument, for the purposes of the definition of *weekly interest on the lump sum* in subsections 21(3) and 21A(3) of the *Safety, Rehabilitation and Compensation Act 1988*, the specified rate for the period specified in column 1 of an item, was the rate specified in column 2 of that item by the instrument specified in column 3 of that item.

<b>Item</b>	<b>Column 1 Period</b>	<b>Column 2 Specified Rate</b>	<b>Column 3 Instrument</b>
1	1 July 2020 to 30 June 2021	1.21%	<i>Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Instrument 2020 (F2020L00787)</i>
2	1 July 2019 to 30 June 2020	2.52%	<i>Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Instrument 2019 (F2019L00920)</i>
3	1 July 2018 to 30 June 2019	2.64%	<i>Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Instrument 2018 (F2018L00803)</i>
4	1 July 2017 to 30 June 2018	2.37%	<i>Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Notice 2017 (F2017L00698)</i>
5	1 July 2016 to 30 June 2017	2.72%	<i>Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Notice 2016 (F2016L01104)</i>
6	1 July 2015 to 30 June 2016	3.26%	<i>Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Notice 2015 (F2015L00855)</i>
7	1 July 2014 to 30 June 2015	3.86%	<i>Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Notice 2014 (F2014L00680)</i>
8	1 July 2013 to 30 June 2014	3.24%	<i>Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Notice 2013(1) (F2013L01258)</i>
9	1 July 2012 to 30 June 2013	4.48%	<i>Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Notice 2012 (1) (F2012L01263)</i>
10	1 July 2011 to 30 June 2012	5.35%	<i>Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Notice 2011 (1) (F2011L01282)</i>
11	1 July 2010 to 30 June 2011	5.38%	<i>Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Notice 2010 (F2010L01739)</i>
12	1 July 2009 to 30 June 2010	5.35%	<i>Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Notice 2009 (F2009L02161)</i>
13	1 July 2008 to 30 June 2009	6.08%	<i>Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Notice 2008 (2) (F2008L02336)</i>
14	1 July 2007 to 30 June 2008	5.72%	<i>Safety, Rehabilitation and Compensation (Weekly Interest on the Lump Sum) Notice 2007(2) (F2007L01142)</i>
15	27 April 2007 to 30 June 2007	5.72%	<i>Safety, Rehabilitation and Compensation</i>

