**SAFETY, REHABILITATION AND COMPENSATION DIRECTIONS AMENDMENT INSTRUMENT 2023**

**EXPLANATORY STATEMENT**

Issued by authority of the Minister for Employment and Workplace Relations

under sections 89D and 101 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.

The Safety, Rehabilitation and Compensation Commission (the Commission) is established by the SRC Act. The Commission has a number of functions and powers under the SRC Act, including the granting of licences to eligible applicants under Part VIII of the Act.

Pursuant to section 89D of the SRC Act, the Minister may give a direction to the Commission with respect to the performance of its functions and the exercise of its powers under the SRC Act. Section 101 of the SRC Act provides that the Minister's power to give directions to the Commission under section 89D of the SRC Act extends to directions concerning any matter relating to the grant of licences under Part VIII of the Act.

On and from 28 March 2019, the Commission has been subject to the Ministerial directions contained in the *Safety, Rehabilitation and Compensation Directions 2019* (the 2019 Directions). The 2019 Directions were amended from 8 April 2022 by the *Safety, Rehabilitation and Compensation Directions Amendment Instrument 2022*.

This instrument amends the 2019 Directions to introduce a new direction. The new direction requires that in determining an application for a new licence under s 104 of the SRC Act, the primary criteria to be considered by the Commission is whether it is satisfied, on reasonable grounds, that:

1. the licence applicant is a member of a corporate group in which a majority of employees in the corporate group are, at the time of the application, covered by the Act; and
2. the licence would not result in an overall reduction in workers’ compensation entitlements for the employees of the applicant to be covered by the Act.

To avoid doubt, new direction 7A does not apply to applications to extend or vary licences under s 105 of the SRC Act.

This new direction applies from the date of the commencement of this instrument to the Commission’s determination under s 104 of the SRC Act of each application for a licence, irrespective of the date of the application.

**CONSULTATION**

Consultation was undertaken with the Commission members, the Safety, Rehabilitation and Compensation Licensees Association and its members, Comcare, Healthscope Operations Pty Ltd, IPEC Pty Ltd, Toll Transport Pty Ltd, Ventia Australia Pty Ltd, Wilson Parking Australia 1992 Pty Ltd and John Holland Group Pty Ltd. Those that were consulted were provided with an outline of the instrument and were invited to provide feedback. Where appropriate, feedback received during the consultation process has been incorporated into the instrument and this statement.

**REGULATORY IMPACT STATEMENT**

The Office of Impact Analysis was consulted regarding this instrument and indicated that a Regulatory Impact Statement was not required (OIA23-04533).

The instrument takes effect on the day after it is registered on the Federal Register of Legislation.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*, but is not subject to disallowance (see item 2 of section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015*) or sunsetting (see item 3 of section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

S**TATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

**Safety, Rehabilitation and Compensation Directions Amendment Instrument 2023**

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.

The Safety, Rehabilitation and Compensation Commission (the Commission) is established by the SRC Act. The Commission has a number of functions and powers under the SRC Act, including the granting of licences to eligible applicants under Part VIII of the Act.

Pursuant to section 89D of the SRC Act, the Minister may give a direction to the Commission with respect to the performance of its functions and the exercise of its powers under the SRC Act. Section 101 of the SRC Act provides that the Minister's power to give directions to the Commission under section 89D of the SRC Act extends to directions concerning any matter relating to the grant of licences under Part VIII of the Act.

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1. the licence applicant is a member of a corporate group in which a majority of employees in the corporate group are, at the time of the application, covered by the Act; and
2. the licence would not result in an overall reduction in workers’ compensation entitlements for the employees of the applicant to be covered by the Act.

New direction 7A does not apply to applications to extend or vary licences under s 105 of the SRC Act.

**Human rights implications**

### Article 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) provides for the right of everyone to the enjoyment of just and favourable conditions of work. Article 11 of the ICESCR provides for the right of everyone to an adequate standard of living. 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 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]](#footnote-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 access to rehabilitation support. By doing so, it also supports the rights to just and favourable working conditions and to an adequate standard of living.

### The instrument engages, but does not limit, human rights. Its effect is to direct the Commission to take as the primary criteria for consideration in determining an application for a licence under Part VIII of the SRC Act the matters specified in the instrument. The grant of a licence under of the SRC Act may affect which workers’ compensation scheme is applicable to certain employees, but does not affect the right of the employee to workers’ compensation generally.

### Accordingly, the instrument does not impinge upon the rights to just and favourable working conditions and to an adequate standard of living, and does not limit the right to social security.

**Conclusion**

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

**The Hon Tony Burke MP**

Minister for Employment and Workplace Relations

**Attachment A**

**NOTES ON SECTIONS**

**Section 1 – Name**

Section 1 provides that the title of the instrument is the *Safety, Rehabilitation and Compensation Directions Amendment Instrument 2023*.

**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 sections 89D and 101 of the *Safety, Rehabilitation and Compensation Act 1988.*

**Section 4 – Definitions**

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

**Section 5 – Schedules**

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

**Schedule 1 – Amendments**

Schedule 1 to the instrument amends the *Safety, Rehabilitation and Compensation Directions 2019* as specified in the schedule.

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]. [↑](#footnote-ref-1)