

**SAFETY, REHABILITATION AND COMPENSATION (LICENCE ELIGIBILITY—
TOLL TRANSPORT PTY LTD) AMENDMENT INSTRUMENT 2024**

EXPLANATORY STATEMENT

Issued by authority of the Minister for Employment and Workplace 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* (SRC Act) establishes the Commonwealth workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations.

Under Part VIII of the SRC 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 SRC Act; and
- (b) manage the claims of its employees in accordance with the SRC Act.

An 'eligible corporation' is a corporation that has been declared to be such by the Minister for Employment and Workplace Relations under subsection 100(1) of the SRC Act. Subsection 100(1) of the SRC Act provides that, if the Minister is satisfied that it would be desirable for the SRC 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 SRC Act.

The Minister made such a declaration in respect of Toll Transport Pty Ltd (ACN 006 604 191; ABN 31 006 604 191) ('Toll Transport'): *Safety, Rehabilitation and Compensation (Licence Eligibility—Toll Transport Pty Ltd) Declaration 2022* ('2022 Declaration'), which relevantly provided the period in which Toll Transport is able to submit an application for, and to be eligible to be granted, a licence under Part VIII of the SRC Act, was 24 months after the day on which the declaration commenced.

This instrument extends the period in which Toll Transport is able to submit an application for, and to be eligible to be granted, a licence under Part VIII of the SRC Act to 36 months, to allow for the well progressed, but not yet considered, application to be advanced. The effect is that Toll Transport will remain eligible to be granted a licence by the Commission until 1 April 2025, as the 2022 Declaration will now self-repeal on 2 April 2025 instead of 2 April 2024.

Subsection 33(3) of the *Acts Interpretations Act 1901* provides the power to make a legislative instrument includes the power to vary the instrument.

Pursuant to subsection 100(1) of the SRC Act, the Minister is satisfied that:

- (i) Toll Transport continues to be a corporation carrying on business in competition with current or former Commonwealth authorities; and
- (ii) it remains desirable for the SRC Act to apply to the employees of Toll Transport.

CONSULTATION

This instrument was made at the request of Toll Transport and in consultation with Comcare and Toll Transport. Wider consultation was not required as the effect of the instrument is to extend the period in which Toll Transport is eligible to be granted a licence by the Commission under section 102 of the SRC 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.

The Office of Impact Analysis was consulted regarding instruments made under section 100 of the SRC Act and has indicated that a Preliminary Assessment is not required for these instruments (OIA23-06161).

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

This instrument commences the day after it is registered on the Federal Register of Legislation.

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—Toll Transport Pty Ltd) Amendment Instrument 2024

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.

Under Part VIII of the SRC 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 SRC Act; and
- (b) manage the claims of its employees in accordance with the SRC Act.

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

The Minister made such a declaration in respect of Toll Transport Pty Ltd (ACN 006 604 191; ABN 31 006 604 191) ('Toll Transport'): *Safety, Rehabilitation and Compensation (Licence Eligibility—Toll Transport Pty Ltd) Declaration 2022* ('2022 Declaration').

This instrument amends the 2022 Declaration to extend the period in which Toll Transport is eligible to be granted a licence under Part VIII of the SRC Act. The effect is that Toll Transport will remain eligible to be granted a licence by the Commission until 1 April 2025, as the 2022 Declaration will now self-repeal on 2 April 2025.

Pursuant to subsection 100(1) of the SRC Act, the Minister is satisfied that:

- (i) Toll Transport continues to be a corporation carrying on business in competition with current or former Commonwealth authorities; and
- (ii) it remains desirable for the SRC Act to apply to the employees of Toll Transport.

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 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.

In order to grant Toll Transport a licence, the Commission will be required to consider if it is appropriate to grant Toll Transport a licence. To be satisfied that it is appropriate to grant Toll Transport a licence, the Commission must be satisfied, among other things, that Toll Transport 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 Toll Transport employees, and that the grant of the licence will not be contrary to the interests of Toll Transport employees (section 104 of the SRC Act).

This declaration engages but does not limit human rights. Its effect is that it extends the period in which Toll Transport may 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 Toll Transport 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 Tony Burke

Minister for Employment and Workplace Relations

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].

NOTES ON SECTIONS

Section 1 – Name

Section 1 provides that the title of the instrument is the *Safety, Rehabilitation and Compensation (Licence Eligibility—Toll Transport Pty Ltd) Amendment Instrument 2024*.

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 – Schedule

Section 4 provides that each instrument that is specified in Schedule 1 to the instrument is amended or repealed as set out in the applicable items in that Schedule and any other item in the Schedule to the instrument has effect according to its terms.

Schedule 1 - Amendments

Schedule 1 to the instrument amends the *Safety, Rehabilitation and Compensation (Licence Eligibility—Toll Transport Pty Ltd) Declaration 2022* to extend the date of automatic repeal of that Declaration from 24 months to 36 months from the date of commencement of that Declaration.