

EXPLANATORY STATEMENT

Military Rehabilitation and Compensation (Members – War Artists and Entertainers - Service End Date) Amendment Determination 2015

The *Military Rehabilitation and Compensation (Members – War Artists and Entertainers - Service End Date) Amendment Determination 2015* is made under section 8 of the *Military Rehabilitation and Compensation Act 2004* (the Act).

Background

The Review of Military Compensation Arrangements (2009-2011)(MRCA Review) considered, among other issues, the process whereby civilians engaged to perform a service on behalf of the Defence Force (e.g. entertainers, war artists) should have access to workers' compensation under the *Military Rehabilitation and Compensation Act 2004* (MRCA).

Ultimately the Government decided it was more appropriate for workers' compensation coverage to be provided to the civilians in question under the *Safety, Rehabilitation and Compensation Act 1988* (SRCA) than the MRCA which should be restricted to coverage of military personnel.

Accordingly, the two determinations under the MRCA that provided MRCA coverage for entertainers and war artists needed to be "closed off" because it is contemplated that the Minister for Employment will make a legislative instrument under the SRCA providing workers' compensation coverage to the civilians in question where they are not covered by any other statutory workers' compensation scheme.

The attached instrument closes off MRCA coverage for entertainers and war artists who provided the relevant services for the Defence Force during the following periods:

Entertainers - 1 July 2004 to and including the day before the SRCA instrument commences.

War Artists - 1 February 2007 to and including the day before the SRCA instrument commences.

Subsection 26(1B) of the *Legislative Instruments Act 2003* provides that the requirement for an explanatory statement to explain the purpose and operation of an instrument may be met by an explanation that the instrument replaces a specified earlier legislative instrument or a specified provision of an earlier legislative instrument and is the same in substance as the specified instrument or provision.

The attached Determination amends the *Military Rehabilitation and Compensation (Members) Determination 2006 (No.2)* and the *Military Rehabilitation and Compensation (Members) Determination 2007* by inserting into the determinations a closing date for coverage under the determinations

and a new definition. The amendments only come into effect when the SRCA instrument commences. Apart from these changes, the determinations remain the same.

Also, subsection 26(1D) of the *Legislative Instruments Act 2003* provides that a single explanatory statement may relate to one or more legislative instruments – which is the case here.

Consultation

No consultation was undertaken as the issue of appropriate workers' compensation coverage for civilians working for the Defence Force was previously raised as part of a series of public consultations held on the MRCA Review.

The Steering Committee for the Review consulted the Veteran & Defence Community generally. Consultation was via Australian Defence Force base public meetings, a dedicated WebPage, working party meetings with Ex Service Organisations and correspondence.

In any event, workers' compensation coverage for the civilians in question is not being terminated, merely transferred to a different legislative scheme.

In these circumstances consultation was seen as unnecessary.

Documents incorporated by reference

No.

Human rights implications

No. The attached legislative instrument is technical in nature and merely facilitates a change in the legislative basis for providing workers compensation coverage for a class of persons. The instrument closes off workers compensation coverage under one statutory scheme to ensure there is no possibility of double-coverage under two statutory workers compensation schemes.

In conclusion, the Determination is compatible with human rights.

Regulatory Impact

The Determination will not have an impact on business activity or business competition and will impose no compliance requirements on beneficiaries.

Details of the Determination

Section 1 states the name of the Determination.

Section 2 is a commencement provision and provides that the Determination commences when the *Safety, Rehabilitation and Compensation (Definition of Employee – War Artists and Entertainers) Notice 2015* commences.

Section 3 is a saving and application provision. The intention of this provision is to ensure that an entitlement of a person to compensation under the *Military Rehabilitation and Compensation Act 2004* in respect of an act covered by the instruments being amended by the attached instrument (amended instruments) is not affected by the attached instrument where the act occurred during the period covered by the amended instruments.

Section 4 provides that the instruments mentioned in the section are amended, respectively, in accordance with Parts A and B of the Schedule.

Schedule

Part A amends the *Military Rehabilitation and Compensation (Members) Determination 2006 (No.2)*.

Item 1 is a definitions section.

Item 2 substitutes Schedule 1. The only new changes to the former Schedule 1 are:

- a relevant act may be performed under the auspices of the Department of Defence in addition to the Forces Advisory Committee on Entertainment because the latter body has been disbanded since 15 December 2014;
- the insertion of an end date for coverage of the acts described in the Schedule namely the day before the *Safety, Rehabilitation and Compensation (Definition of Employee – War Artists and Entertainers) Notice 2015* commences.

Part B amends the *Military Rehabilitation and Compensation (Members) Determination 2007*.

Item 1 is a definitions section.

Item 2 substitutes Schedule 1. The only new change to the former Schedule 1 is the insertion of an end date for coverage of the acts described in the Schedule namely the day before the *Safety, Rehabilitation and Compensation (Definition of Employee – War Artists and Entertainers) Notice 2015* commences.