

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment

Safety, Rehabilitation and Compensation Act 1988
Subsection 5(6)

Safety, Rehabilitation and Compensation (Definition of *Employee* – War Artists and Entertainers) Notice 2015

The *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) provides workers' compensation coverage for employees of the Commonwealth, Commonwealth authorities and private corporations who self-insure under the SRC Act.

Section 5 of the SRC Act defines who is an 'employee' for the purposes of the SRC Act. Under subsection 5(6) of that definition, the Minister may declare that persons, being persons who engage in activities or perform acts:

- at the request or direction, for the benefit, or under a requirement made by or under a law, of the Commonwealth; or
- at the request or direction, or for the benefit, of a Commonwealth authority,

are taken to be employed by the Commonwealth for the purposes of the SRC Act.

This legislative instrument extends workers' compensation coverage under the SRC Act to persons commissioned by the Australian War Memorial to provide original artistic and literary works concerning the operations of the Australian Defence Force. It will also provide workers' compensation coverage under the SRC Act for contractors who provide entertainment or who support that entertainment, at the direction or request of the Department of Defence. 'Entertainment' includes, but is not limited to, musical performances.

Workers' compensation coverage for these persons is currently provided by determinations made under section 8 of the *Military Rehabilitation and Compensation Act 2004* (MRC Act). Persons covered by these determinations are considered to be 'members' for the purposes of the MRC Act.

The MRC Act is designed to recognise the unique nature of military service and to provide a corresponding, specialist rehabilitation and compensation scheme. This declaration together with amendments made to the declarations made under the MRC Act will move civilian war artists and entertainers from workers compensation coverage under the MRC Act, to the SRC Act, being the scheme that applies to other civilian Commonwealth employees.

The Minister for Veterans Affairs has amended the determinations made under section 8 of the MRC Act so that coverage of war artists and entertainers by the MRC Act will end in relation to injuries arising from service after the commencement of this declaration. Compensation will continue to be payable under the MRC Act for injuries arising from service performed before the commencement of this notice.

The change to workers compensation arrangements for war artists and entertainers is made at the request of the Assistant Minister for Defence.

It was not practicable to undertake consultation with civilian entertainers or war artists themselves because they are generally contracted by Defence and the Australian War Memorial for only very short term commissions. But the issue of appropriate compensation coverage for civilians providing services to the Australian Defence Force (ADF) was raised as part of the review into *Military Rehabilitation and Compensation Arrangements* (2011). The principle to extend the coverage of the SRC act to persons who are accompanied or deployed with the ADF or working closely with or for the benefit of the ADF for a period where there would be no other statutory entitlement to workers compensation was approved by the Military Rehabilitation and Compensation Commission.

An exemption from the preparation of a Regulation Impact Statement was granted by the Office of Best Practice Regulation (OBPR ID No 19050).

This declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

This declaration will commence the day after it is registered on the Federal Register of Legislative Instruments.

Statement of Compatibility with Human Rights

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

Safety, Rehabilitation and Compensation (Definition of *Employee* - War Artists and Entertainers) Notice 2015

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) provides workers' compensation coverage for employees of the Commonwealth, Commonwealth authorities and private corporations that self-insure under the SRC Act.

The SRC Act provides that persons may be declared by the Minister to be employees of the Commonwealth, a Commonwealth authority or a licensed corporation for the purposes of the SRC Act. This has the effect that the specified persons will be covered by the SRC Act.

In this Notice, persons commissioned to provide original artistic and literary works concerning the operations of the Australian Defence Force are declared to be employees for the purposes of the SRC Act when they perform the acts prescribed in the notice under the direction or at the request of the Australian War Memorial. The Notice also provides that contractors who provide entertainment, or support that entertainment, at the direction or request of the Department of Defence, are declared to be employees for the purposes of the SRC Act when they perform the acts prescribed in the Notice under the direction or at the request of the Department of Defence.

Workers' compensation coverage for these classes of persons is currently provided by determinations under section 8 of the *Military Rehabilitation and Compensation Act 2004* (MRC Act). The persons covered by those determinations are considered to be 'members' for the purposes of the MRC Act.

The Minister for Veterans Affairs has amended the determinations made under section 8 of the MRC Act so that coverage of war artists and entertainers by the MRC Act will end in relation to injuries arising from service after the commencement of the Notice which extends workers compensation coverage under the SRC Act to these persons. Compensation will continue to be payable under the MRC Act for injuries arising from service performed before the commencement of this declaration.

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,

‘States parties should... ensure the protection of workers who are injured in the course of employment or other productive work’.¹

This Notice engages the right to social security as it deals with workers’ compensation arrangements.

Both the MRC Act and the SRC Act provide workers’ compensation schemes for employees who have been injured at work by way of weekly compensation payments, payment of medical expenses, permanent impairment benefits and other benefits.

The SRC Act provides workers’ compensation coverage to employees of the Australian Public Service, Parliamentary Departments, Commonwealth authorities, the Australian Capital Territory Government and private corporations who hold a licence to self-insure under the SRC Act. The SRC Act also applies to certain members of the Australian Defence Force in relation to service rendered prior to the commencement of the MRC Act on 1 July 2004.

The MRC Act applies to members of the Australian Defence Force, cadets and certain other classes of persons who have a close connection to the work of the Australian Defence Force. The MRC Act is designed to recognise the unique nature of military service and to provide a corresponding, specialist rehabilitation and compensation scheme.

This Notice will have the effect that, going forward, compensation benefits and support for war artists and entertainers will be aligned with that provided to other civilian Commonwealth employees.

While the workers’ compensation schemes established by the MRC Act and SRC Act are largely comparable, there are some differences. The maximum payment amounts in respect of permanent impairment payments and death benefits are higher under the MRC Act. There are also differences in the standard of proof required for claim determination – under the SRC Act, there are standardised tests that do not change depending on the type of injury or type of service. The legitimate objective of this Notice, and the corresponding notice to amend coverage under the MRC Act for war artists and entertainers is to ensure that the MRC Act, which is a specialist workers’ compensation for people engaged in military service, will apply only to those people. The SRC Act is a more appropriate scheme for civilian employees, including employees who are posted overseas. The SRC Act covers, for example, employees of the Commonwealth who are posted to overseas locations including Afghanistan and Iraq.

There is a rational connection between this Notice and its legitimate objective, in that this Notice will provide coverage, going forward, for civilian war artists and entertainers under the SRC Act instead of the MRC Act.

Where, because of the specific facts of an individual’s circumstances, that individual would have been entitled to a more favourable outcome had they been covered by the MRC Act instead of the SRC Act, and that discrepancy constitutes a limitation on that individual’s right to social security, the limitation is reasonable, proportionate and necessary. The Notice has effect prospectively, and will not affect any claims in progress, or any injuries suffered as a result of activities before the commencement of the Notice.

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].

In addition, it is noted that the workers' compensation scheme under the SRC Act meets the right to social security. It provides for income replacement for injuries which result in incapacity for work. It also covers the costs of medical treatment and rehabilitation. Entitlement to these benefits is not subject to the length of employment, the duration of insurance or to the payment of contributions by the employee.

Conclusion

The Legislative Instrument is compatible with human rights because it advances the protection of human rights by extending coverage of the SRC Act, and therefore workers' compensation coverage, to persons who would not otherwise be covered by the SRC Act.

Senator The Hon Michaelia Cash

Minister for Employment