

EXPLANATORY STATEMENT

Safety, Rehabilitation and Compensation Act 1988

Issued by the Minister for Jobs and Industrial Relations

Safety, Rehabilitation and Compensation (Specified Laws) Amendment Declaration 2019

The *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) provides rehabilitation support for employees of the Commonwealth and licensed corporations. The SRC Act also provides workers' compensation for those employees and their dependants.

Subject to the SRC Act, liability to make compensation payments arises in respect of the following:

- an 'injury' suffered by an employee if that 'injury' results in death, incapacity for work or impairment (subsection 14(1)); medical treatment that is obtained in relation to that 'injury' (subsections 16(1) and 16(2)); household services or attendant care services obtained as a result of that injury (sections 29 and 29A); or
- loss of, or damage to, 'property used by an employee' (subsections 4(1) and 15(1)).

If compensation is payable under the SRC Act, some or all of that compensation may have to be repaid, or offset against other compensation payments, in certain circumstances.

Relevantly, compensation must be repaid or offset in accordance with section 119 if:

- an employee recovers 'State compensation' in respect of an 'injury' or the loss of, or damage to, 'property used by the employee'; or
- 'State compensation' is recovered by, or for the benefit of, a dependant of a deceased employee.

This explanatory statement concerns the operation of section 119 and the legislative instrument made under subsection (7) of that section.

Purpose and effect of section 119 of the SRC Act

The purpose of section 119 is to prevent employees or their dependants from receiving both compensation under the SRC Act and 'State compensation' in prescribed circumstances.

'State compensation' means compensation recoverable under a law of a State or Territory that provides for the payment of compensation (other than workers' compensation, which is covered by section 118 of the SRC Act) and is declared by the Minister by legislative instrument to be a 'specified law' for the purposes of the SRC Act (subsection 119(7)).

The *Safety, Rehabilitation and Compensation (Specified Laws) Declaration 2017* (Specified Laws Declaration) declares a list of State and Territory laws which are 'specified laws' for the purposes of s 119 of the SRC Act.

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The purpose of this instrument is to add the *Motor Accident Injuries Act 2017* (NSW) to the list of specified laws in the Specified Laws Declaration as outlined in Schedule 1.

Details of Schedule 1 to this instrument are set out in [Attachment A](#).

This instrument is made under subsection 119(7) of the SRC Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Item 2 of this instrument provides this instrument will commence 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*.

Consultation

The Department of Jobs and Small Business consulted employer and employee representatives, Comcare and the Department of Veterans' Affairs.

Regulation Impact Statement

The Office of Best Practice Regulation has confirmed that a Regulation Impact Statement is not required (OBPR ID 23941).

Schedule 1—Amendments

Safety, Rehabilitation and Compensation (Specified Laws) Declaration 2017

Item 1 – Schedule 1 (after table item 1)

This item adds the *Motor Accident Injuries Act 2017* (NSW) to the list of specified laws in the Specified Laws Declaration. The *Motor Accident Injuries Act 2017* (NSW) is a State law under which compensation is recoverable for injury, or loss or damage to certain property. It establishes a scheme of compulsory third-party insurance and provision of benefits and support relating to the death of or injury to persons as a consequence of motor accidents.

Item 2 –Transitional (operation for the purposes of the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988)

The Specified Laws Declaration also operates for the purposes of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* because of item 63 of Schedule 1 to the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017*.

The *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* is administered by the Minister for Veterans' Affairs.

This item confirms that the amendments of the Specified Laws Declaration made by this instrument do not apply in relation to the operation of the Specified Laws Declaration for the purposes of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

Statement of Compatibility with Human Rights

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

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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) relevantly provides workers' compensation for employees of the Commonwealth and licensed corporations and their dependants.

This legislative instrument updates the list of specified laws declared in the *Safety, Rehabilitation and Compensation (Specified Laws) Declaration 2017* (Specified Laws Declaration) to include the *Motor Accident Injuries Act 2017* (NSW).

The purpose of this instrument is to prevent the double receipt of compensation under the SRC Act and a State or Territory law. A person will not be able to receive compensation in respect of the same injury, loss or damage under both the SRC Act and the *Motor Accident Injuries Act*.

Item 1

This item adds the *Motor Accident Injuries Act 2017* (NSW) to the list of specified laws in the Specified Laws Declaration. The *Motor Accident Injuries Act 2017* (NSW) is a State law under which compensation is recoverable for injury, or loss or damage to certain property. It establishes a scheme of compulsory third-party insurance and provision of benefits and support relating to the death of or injury to persons as a consequence of motor accidents.

Item 2

This item confirms that the amendments of the Specified Laws Declaration made by this instrument do not apply in relation to the operation of the Specified Laws Declaration for the purposes of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*, which is administered by the Minister for Veterans' Affairs.

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.

The SRC Act operates to ensure an employee (or a dependant of an employee) is compensated for loss they suffer due to an injury, or the loss of, or damage to, certain property used by the employee.

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].

An employee (or the dependant of an employee) who chooses to recover an amount of compensation under a specified law will still be entitled to receive an amount of compensation at least equal to the amount that is payable under the SRC Act.

Section 119 of the SRC Act and this legislative instrument operate to ensure that an employee (or the dependant of an employee) cannot ‘double dip’ by being compensated twice under two different laws for the same injury, or loss or damage to certain property.

Conclusion

The legislative instrument is compatible with human rights because it does not negatively impact on human rights.

The Hon Kelly O’Dwyer MP
Minister for Jobs and Industrial Relations