

SAFETY, REHABILITATION AND COMPENSATION (SPECIFIED LAWS)
AMENDMENT DECLARATION 2020

EXPLANATORY STATEMENT

Issued by authority of the Minister for Industrial Relations

under subsection 119(7) of the *Safety, Rehabilitation and Compensation Act 1988*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) provides rehabilitation support for employees of the Commonwealth, Commonwealth authorities 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 (as defined by section 5A) 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 paid or payable under the SRC Act, to avoid double compensation some or all of that compensation may have to be repaid or offset against other compensation payments.

Under the SRC Act, 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.

'State compensation' means compensation recoverable under a 'specified law' which can be a State or Territory law. A 'specified law' is a law of a State or Territory that provides for the payment of compensation (other than workers' compensation) and is declared by the Minister by legislative instrument to be a 'specified law' for the purposes of the SRC Act. Section 118 deals separately with State and Territory laws relating to workers' compensation.

The *Safety, Rehabilitation and Compensation (Specified Laws) Declaration 2017* (Specified Laws Declaration) declares the relevant 'specified laws' under subsection 119(7) of the SRC Act.

The purpose of this instrument is to add the *Motor Accident Injuries Act 2019* (ACT) (MAI Act) to the list of specified laws outlined in Schedule 1 of the Specified Laws Declaration. The MAI Act is a Territory law that came into effect on 1 February 2020, 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.

CONSULTATION

Consultation was not undertaken in relation to this instrument because the amendment made by this instrument is machinery in nature and will not substantially alter existing arrangements.

This amendment will update the Specified Laws Declaration to include the MAI Act which is a Territory law that has been introduced to replace an existing specified law – the *Road Transport (Third-Party Insurance) Act 2008* (ACT). This amendment updates the Specified Law Declaration to ensure it captures the ACT's new scheme of compulsory third party insurance for motor vehicle accidents. It does not introduce a new type of compensation to the Specified Laws Declaration.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation was consulted regarding this instrument and indicated that a Regulation Impact Statement is not required (OBPR ID: 42774).

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

This instrument will commence 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 (Specified Laws) Amendment Declaration 2020

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.

The *Safety, Rehabilitation and Compensation (Specified Laws) Declaration 2017* (Specified Laws Declaration) specifies the State and Territory laws that are 'specified laws' under subsection 119(7) of the SRC Act. The purpose of the Specified Laws Declaration is to prevent the double receipt of compensation under the SRC Act and a State or Territory law for the same injury or loss of, or damage to, property used by the employee.

This legislative instrument updates the list of specified laws declared in the Specified Laws Declaration to include the *Motor Accident Injuries Act 2019* (ACT) (MAI Act). The MAI Act is a Territory 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.

Amendments to 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.

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 operates 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 as it does not raise any human rights issues.

The Hon Christian Porter MP

Minister for Industrial 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 (Specified Laws) Amendment Declaration 2020*.

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 subsection 119(7) of the *Safety, Rehabilitation and Compensation Act 1988*.

Section 4 – Schedule

Section 4 provides that each instrument that is specified in the Schedule 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

Safety, Rehabilitation and Compensation (Specified Laws) Declaration 2017

Schedule 1 of this instrument amends the Declaration at Schedule 1 of the *Safety, Rehabilitation and Compensation (Specified Laws) Declaration 2017* (Specified Laws Declaration).

Item 1 – Schedule 1 (after table item 15)

Item 1 of Schedule 1 adds the *Motor Accident Injuries Act 2019* (ACT) to the list of specified laws in the Specified Laws Declaration as table item 15A.

The *Motor Accident Injuries Act 2019* (ACT) is a Territory 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)

Item 2 of Schedule 1 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*.

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.