

## **SAFETY, REHABILITATION AND COMPENSATION**

### **(DEFINITION OF ACT EMPLOYEE – COVID-19 EMERGENCY RESPONSE VOLUNTEERS) DECLARATION 2021**

#### **EXPLANATORY STATEMENT**

Issued by authority of the Minister for Industrial Relations

under subsection 5(15) 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.

The Australian Capital Territory (ACT) was declared to be a Commonwealth authority under section 4A of the SRC Act by the *Safety, Rehabilitation and Compensation Act 1988 - Notice of Declaration (Notice No. ACT1 of 1994)* with effect from 1 July 1994. On 28 November 2018, the ACT was granted a licence under Part VIII of the SRC Act and has been a licensed authority under the Act from 1 March 2019.

Subsections 5(11)-(15) of the SRC Act regulate who may be treated as an employee of the ACT for the purposes of the SRC Act.

Pursuant to s5(15) of the SRC Act, the Minister may declare that specified persons are taken to be employees of the ACT when engaging in activities:

- a) at the request or direction, or for the benefit, of the Australian Capital Territory; or
- b) in accordance with a requirement made by or under an ACT enactment; or
- c) at the request or direction, or for the benefit, of an authority or body established by an ACT enactment.

In this instrument, at the written request of Mr Andrew Barr MLA, Chief Minister of the ACT, the Minister declares that persons identified by the ACT Chief Health Officer in writing to be COVID-19 Response Volunteers who, without receiving any remuneration (other than payment of expenses incurred), and

- (i) at the request or direction, or for the benefit, of the ACT;
- (ii) in accordance with a requirement made by or under an ACT enactment; or
- (iii) at the request or direction, or for the benefit, of an authority or body established by an ACT enactment

assists in the delivery of ACT COVID emergency response services under the control or direction of an ACT Government officer, are taken to be an employee of the ACT for the purposes of the Act, when rendering such assistance.

A declaration of this type is consistent with the ACT's self-insurance license obligations under the SRC Act.

## **CONSULTATION**

Consultation was undertaken with the ACT, pursuant to the written request made by the Chief Minister of the ACT. Wider consultation was not required as the effect of the instrument is to provide SRC Act coverage to volunteers assisting the ACT's COVID-19 emergency response.

## **REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation was consulted regarding this instrument and indicated that a Regulation Impact Statement was not required (OBPR ID: 44571).

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003* on the basis that it is registered as a legislative instrument.

This instrument commences from 12 August 2021. For the purposes of subsection 12(2) of the *Legislation Act 2003*, this commencement date does not disadvantage any person nor impose liabilities on any person in respect of anything done or omitted to be done before the instrument was registered.

## 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 – COVID-19 Emergency Response Volunteers) Instrument 2021**

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) establishes the Commonwealth workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations.

The Australian Capital Territory (ACT) was declared to be a Commonwealth authority under section 4A of the SRC Act by the *Safety, Rehabilitation and Compensation Act 1988 - Notice of Declaration (Notice No. ACT1 of 1994)* with effect from 1 July 1994.

Subsections 5(11)-(15) of the SRC Act regulate who may be treated as an employee of the ACT for the purposes of the SRC Act.

In this instrument, pursuant to s5(15) of the SRC Act and at the written request of Mr Andrew Barr MLA, Chief Minister of the ACT, the Minister declares that persons identified by the ACT Chief Health Officer in writing to be COVID-19 Response Volunteers who, without receiving any remuneration (other than payment of expenses incurred), and

- (i) at the request or direction, or for the benefit, of the ACT;
- (ii) in accordance with a requirement made by or under an ACT enactment; or
- (iii) at the request or direction, or for the benefit, of an authority or body established by an ACT enactment

assists in the delivery of ACT COVID emergency response services under the control or direction of an ACT Government officer, are taken to be an employee of the ACT for the purposes of the Act, when rendering such assistance.

#### **Human rights implications**

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* provides for the right of every one 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'.<sup>1</sup>

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.

This instrument provides workers' compensation coverage under the SRC Act to volunteers assisting the ACT's COVID-19 emergency response.

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<sup>1</sup> 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].

## **Conclusion**

This legislative instrument is compatible with human rights because it does not raise any human rights issues.

**Senator the Hon Michaelia Cash**

Minister for Industrial Relations

## **NOTES ON SECTIONS**

### **Section 1 – Name**

Section 1 provides that the title of the instrument is the *Safety, Rehabilitation and Compensation (Definition of ACT Employee – COVID-19 Emergency Response Volunteers) Declaration 2021*.

### **Section 2 – Commencement**

Section 2 provides that the declaration commences on 12 August 2021

### **Section 3 – Authority**

Section 3 provides that the declaration is made under subsection 5(15) of the *Safety, Rehabilitation and Compensation Act 1988*.

### **Section 4 – Definitions**

Section 4 provides the definitions of terms used in the instrument.

### **Section 5 – Declaration**

Section 5 provides that persons identified by the ACT Chief Health Officer in writing to be COVID Response Volunteers who, without receiving any remuneration (other than payment of expenses incurred), and

- (i) at the request or direction, or for the benefit, of the ACT;
- (ii) in accordance with a requirement made by or under an ACT enactment; or
- (iii) at the request or direction, or for the benefit, of an authority or body established by an ACT enactment;

assist in the delivery of ACT COVID emergency response services under the control or direction of an ACT Government officer, are taken to be an employee of the ACT for the purposes of the Act, when rendering such assistance.