

SAFETY, REHABILITATION AND COMPENSATION (SPECIFIED PERSONS AND ACTS) AMENDMENT (CHIEF EXECUTIVE OFFICER OF THE AUSTRALIAN RADIOACTIVE WASTE AGENCY) DECLARATION 2021

EXPLANATORY STATEMENT

Issued by authority of the Minister for Industrial Relations
under subsection 5(6) 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.

Section 5 of the SRC Act defines the term 'employee' for the purposes of the SRC Act. Subsection 5(6) of the SRC Act provides that the Minister may, by legislative instrument, declare:

- (a) that specified persons who engage in activities or perform acts:
- (i) at the request or direction, for the benefit, or under a requirement made by or under a law of the Commonwealth; or
 - (ii) at the request or direction, or for the benefit, of a Commonwealth authority, or a licensed corporation;
- shall, for the purposes of the SRC Act, be taken to be employed by the Commonwealth, or by that authority or corporation, as the case may be; and
- (b) that the employment of the specified persons shall be taken to be constituted by the performance of the acts specified in the instrument.

Declaring the Chief Executive Officer to be an employee of the Commonwealth for the purposes of the SRC Act

In this instrument, the Minister declares the Chief Executive Officer (**CEO**) of the Australian Radioactive Waste Agency (**ARWA**) to be employed by the Commonwealth (as represented by the Department of Industry, Science, Energy and Resources) for the purposes of the SRC Act. This has been done at the request of the Minister for Resources and Water. The CEO's employment is taken to be constituted by his or her acts performed in accordance with the role of CEO.

In the role, the CEO engages in activities and performs acts for the benefit of the Commonwealth. The CEO will:

- Have responsibility for the siting, construction and operation of the National Radioactive Waste Management Facility, including obtaining and holding the necessary regulatory licences, permits and approvals.
- Demonstrate ARWA's ongoing capacity and capability to safely and securely manage Australia's radioactive waste to the satisfaction of environmental, radiological, nuclear and security regulators.
- Maintain and implement the Australian Radioactive Waste Management Framework.
- Lead national engagement with Commonwealth, state and territory governments as well as the public, on matters relating to radioactive waste disposal and storage pathways.

- Lead international engagement ensuring Australia’s compliance with its international obligations and the sharing of best practice.
- Develop and drive Australia’s radioactive waste research agenda by fostering innovation, including creating linkages with universities to develop Australian expertise in radioactive waste management.

This satisfies the pre-requisite in subparagraph 5(6)(a)(i) of the SRC Act for the Minister to make this declaration.

The CEO is appointed by the Minister for Resources and Water. The declaration also covers a person who is appointed by the Minister for Resources and Water as CEO in an acting capacity.

CONSULTATION

This instrument was made in consultation with the Department of Industry, Science, Energy and Resources.

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: 44713).

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

This instrument commences 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 Persons and Acts) Amendment (Chief Executive Officer of the Australian Radioactive Waste Agency) Declaration 2021

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) establishes the Commonwealth workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations. The SRC Act also allows the Minister to declare certain persons to be employees for the purposes of the SRC Act.

In this instrument, the Minister for Industrial Relations declares the Chief Executive Officer (CEO) of the Australian Radioactive Waste Agency to be employed by the Commonwealth for workers' compensation purposes under the SRC Act.

The CEO is appointed by the Minister for Resources and Water and undertakes a number of activities for the Commonwealth, including their primary role of coordinating Australia's radioactive waste management framework and strategy.

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.

This instrument extends workers' compensation coverage under the SRC Act to the CEO.

Conclusion

The legislative instrument is compatible with human rights because it promotes human rights.

Senator the Hon Michaelia Cash

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 Persons and Acts) Amendment (Chief Executive Officer of the Australian Radioactive Waste Agency) Declaration 2021*.

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 5(6) of the *Safety, Rehabilitation and Compensation Act 1988*.

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a 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

The Chief Executive Officer (CEO) of the Australian Radioactive Waste Agency is declared to be employed by the Commonwealth (as represented by the Department of Industry, Science, Energy and Resources) for the purposes of the SRC Act. The CEO's employment is taken to be constituted by his or her acts performed in accordance with the role of CEO.