

SAFETY, REHABILITATION AND COMPENSATION (SPECIFIED PERSONS AND ACTS) AMENDMENT (NATIONAL EMERGENCY MANAGEMENT AGENCY) DECLARATION 2022

EXPLANATORY STATEMENT

Issued by authority of the Minister for Employment and Workplace 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 members of the National Emergency Management Agency to be employees of the Commonwealth for the purposes of the SRC Act

The *Safety, Rehabilitation and Compensation (Definition of Employee) Notice 2009 (1)* (the 2009 Declaration) provided that members of emergency response teams (other than Australian Government employees), appointed under authority of the Attorney-General or the Minister for Justice, who were operating at the direction of Emergency Management Australia, a division of the Attorney-General's Department, were employees for the purposes of the SRC Act.

From 1 September 2022, members of emergency response teams are appointed under the authority of the Minister for Emergency Management and operate at the direction of the National Emergency Management Agency. This instrument ensures continued SRC Act coverage for those persons by amending the *Safety, Rehabilitation and Compensation (Specified Persons and Acts) Declaration 2019*, and repealing the 2009 Declaration.

This instrument commences from 1 September 2022, to ensure continuity of coverage for those emergency response team members.

The instrument provides that workers' compensation coverage under the SRC Act will apply to acts performed by members of emergency response teams in connection with providing assistance in response to emergencies and their aftermath within Australia and overseas (including training activities) where the assistance of the Australian Government has been requested. This satisfies the pre-requisite in subparagraph 5(6)(a)(i) of the SRC Act for the Minister to make this declaration.

CONSULTATION

This instrument was made in consultation with the Department of Home Affairs.

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 is not subject to sunseting.

Paragraph 54(2)(b) of the *Legislation Act 2003* provides that Part 4 of Chapter 3 of the *Legislation Act 2003* (sunseting of legislative instruments) does not apply to a legislative instrument prescribed by regulation for the purposes of that paragraph.

Instruments made under subsection 5(6) of the SRC Act are prescribed for the purposes of that paragraph by section 12, item 57(c) of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

This instrument commences retrospectively on 1 September 2022 to ensure continuity of SRC Act coverage for emergency response team members previously covered by the 2009 Declaration. The retrospective commencement of this instrument does not disadvantage any person, nor impose liabilities on any person. Its effect is limited to deeming certain members of emergency response teams, appointed under the authority of the Minister for Emergency Management, to be employees for the purposes of the SRC Act when undertaking the activities prescribed in this instrument. This instrument is therefore not affected by subsection 12(2) of the *Legislation Act 2003*.

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 (National Emergency Management Agency) Declaration 2022

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 Employment and Workplace Relations declares the members of emergency response teams, appointed under the authority of the Minister for Emergency Management who are operating at the direction of National Emergency Management Agency to be employed by the Commonwealth for the purpose of workers' compensation coverage under the SRC Act.

The instrument provides that workers' compensation coverage under the SRC Act will apply to acts performed by members of emergency response teams in connection with providing assistance in response to emergencies and their aftermath (including training activities) within Australia and overseas, where the assistance of the Australian Government has been requested.

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 members of emergency response teams appointed under the authority of the Minister for Emergency Management who are operating at the direction of the National Emergency Management Agency.

Conclusion

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

The Hon Tony Burke MP

Minister for Employment and Workplace 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 (National Emergency Management Agency) Declaration 2022*.

Section 2 – Commencement

Section 2 provides that the instrument commences on 1 September 2022.

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

Schedule 1 to the instrument amends the *Safety, Rehabilitation and Compensation (Specified Persons and Acts) Declaration 2019* as specified in the schedule.

Schedule 2 – Repeals

Schedule 2 to the instrument repeals the listed instrument as specified in the schedule.