

SAFETY, REHABILITATION AND COMPENSATION (DECLARED PLACE - UKRAINE) DECLARATION 2024

EXPLANATORY STATEMENT

Issued by authority of the Minister for Employment and Workplace Relations
under paragraph 6(1)(h) 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.

Under the SRC Act, workers' compensation is generally payable for injuries arising out of, or in the course of, employment and for diseases that were contributed to, to a significant degree, by employment.

Paragraph 6(1)(h) of the SRC Act provides:

- (1) Without limiting the circumstances in which an injury to an employee may be treated as having arisen out of, or in the course of, his or her employment, an injury shall, for the purposes of this Act, be treated as having so arisen if it was sustained:

...

- (h) while the employee was, at the direction or request of the Commonwealth or a licensee, at a place:
 - (i) outside Australia and the external Territories; and
 - (ii) declared by the Minister by legislative instrument to be a place to which this paragraph applies.

The *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2011* amended the SRC Act to include paragraph 6(1)(h). The Explanatory Memorandum stated in relation to this paragraph:

New paragraph (h) will provide that injuries which occurred while an employee was at a declared overseas place, at the direction or request of the Commonwealth or a licensee, will automatically be presumed to be compensable. This means that so long as an employee is doing something that is reasonable (including outside normal working hours), in the circumstances of the overseas posting, he or she will be covered for compensation purposes. This presumption would still be subject to the existing exceptions around submission to an abnormal risk of injury, an injury that is intentionally self-inflicted and injuries arising out of serious and wilful misconduct.

It is anticipated that the Minister's declaration of places to which this new paragraph would apply would be limited to areas which are significantly dangerous and have a higher risk of injury, for example, Iraq and Afghanistan.

In this declaration, the Minister declares that Ukraine is a place to which paragraph 6(1)(h) of the SRC Act applies in recognition of the significant dangers and military-related security risks faced by employees in Ukraine.

It follows that if, following the commencement of the declaration, an employee sustains an injury while in Ukraine at the direction or request of the Commonwealth or a licensee, that injury will be

taken to have arisen out of, or in the course of, the employee's employment for the purposes of the SRC Act.

CONSULTATION

This declaration was made at the request of, and in consultation with, the Department of Foreign Affairs and Trade. The Department of Foreign Affairs and Trade also undertook consultation with the relevant Commonwealth agencies that may direct or require employees to be in the Ukraine.

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.

SUNSETTING

This instrument is exempt from sunseting by reg 12, item 57 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Safety, Rehabilitation and Compensation (Declared Place – Ukraine) Declaration 2024

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.

Under the SRC Act, workers' compensation is generally payable for injuries arising out of, or in the course of, employment and for diseases that were contributed to, to a significant degree, by employment.

Paragraph 6(1)(h) of the SRC Act relevantly provides that:

- (1) Without limiting the circumstances in which an injury to an employee may be treated as having arisen out of, or in the course of, his or her employment, an injury shall, for the purposes of this Act, be treated as having so arisen if it was sustained:

...

- (h) while the employee was, at the direction or request of the Commonwealth or a licensee, at a place:
 - (i) outside Australia and the external Territories; and
 - (ii) declared by the Minister by legislative instrument to be a place to which this paragraph applies.

In this declaration, the Minister declares that Ukraine is a place to which paragraph 6(1)(h) of the SRC Act applies in recognition of the significant dangers and military-related security risks faced by employees in Ukraine.

It follows that if, following the commencement of the declaration, an employee sustains an injury while in Ukraine at the direction or request of the Commonwealth or a licensee, that injury will be taken to have arisen out of, or in the course of, the employee's employment for the purposes of the SRC Act.

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 declaration engages but does not limit human rights. Its effect is to deem an injury sustained while an employee is in Ukraine at the direction or request of the Commonwealth or a licensee to have arisen out of, or in the course of, employment. This reduces the evidentiary burden on an employee injured in these circumstances for the purposes of establishing an entitlement to workers' compensation and other benefits under the SRC Act.

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

Senator the Hon Murray Watt

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 (Declared Place – Ukraine) Declaration 2024*.

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 – Declaration

Section 3 declares that Ukraine is a place to which paragraph 6(1)(h) of the *Safety, Rehabilitation and Compensation Act 1988* applies.