EXPLANATORY STATEMENT

Issued by the authority of the
Minister for Employment and Workplace Relations.

Safety, Rehabilitation and Compensation Act 1988

Definition of ‘Employee’ – subsection 5(6)

The Safety, Rehabilitation and Compensation Act 1988 (the Act) provides workers’ compensation coverage for employees of the Commonwealth, Commonwealth authorities and licensed corporations.

Section 5 defines who is an ‘employee’ for the purposes of the Act. Under section 5(6) of that definition, the Minister may declare that persons, being persons who engage in activities or perform acts at the request or direction, or for the benefit, of the Commonwealth, are taken to be employed by the Commonwealth for the purposes of the Act.

This declaration provides workers’ compensation coverage for persons, other than Australian Government employees, who are members of emergency response teams providing assistance on request or direction, or for the benefit of, the Commonwealth, in disaster-affected countries. The assistance teams are appointed under the authority of the Attorney-General and are under the direction of Emergency Management Australia. Members of the team may comprise personnel from State and Territory governments and private contractors.

Coverage would apply to acts performed by these teams in connection with providing assistance in response to international disasters and other emergencies pursuant to arrangements made between the Australian Government and the Government or relevant authorities of the affected country.

It is appropriate that the teams have workers’ compensation coverage for activities undertaken to assist in the response to a disaster as the operation will be under the authority of the Attorney-General and for the benefit of the Commonwealth. The declaration will provide workers’ compensation coverage to team members while within Australia and while overseas. For example, training for teams is often undertaken within Australia, prior to deployment overseas. While to date, teams have only been deployed in response to requests for assistance from overseas governments, the declaration will also cover teams deployed within Australia in response to a request from an Australian state or territory government.

It is often as a matter of urgency that assistance is required in these disasters, and it is important that workers’ compensation arrangements are in place as soon as teams are formed. Declarations
issued to date have applied to specific teams responding to particular emergencies. However, an emergency response team can be deployed at very short notice, sometimes within 24 hours. Because declarations under subsection 5(6) of the Act cannot operate retrospectively, if a declaration is not issued and registered before a team becomes operational, the team would be exposed to the risk of injury without workers' compensation coverage. Accordingly, the decision was made to issue a generic declaration to cover all future emergency response teams.

Consultation was undertaken with the Attorney-General’s Department. Further consultation was not undertaken as this declaration was made at the request of the Attorney-General himself and it is not likely to have a direct, or substantial indirect, effect on business or restrict competition.

An assessment was made under new guidelines issued by the Office of Best Practice Regulation, which indicated that a Regulation Impact Statement was not required for this declaration.

This notice is a legislative instrument for the purposes of the Legislative Instruments Act 2003 and takes effect on the day after registration on the Federal Register of Legislative Instruments.