EXPLANATORY STATEMENT

Safety, Rehabilitation and Compensation Act 1988

Issued by the Minister for Employment

Safety, Rehabilitation and Compensation (Specified Laws) Declaration 2017

The Safety, Rehabilitation and Compensation Act 1988 (‘SRC Act’) provides rehabilitation support for employees of the Commonwealth and licensed corporations, and members of the Australian Defence Force with certain defence service prior to 1 July 2004 (‘employees’). The SRC Act also provides workers’ compensation for those employees and their dependants.

Subject to the SRC Act, liability to make compensation payments arises in respect of the following:

- an ‘injury’ suffered by an employee if that ‘injury’ results in death, incapacity for work or impairment (subsection 14(1)); if medical treatment is obtained in relation to that ‘injury’ (subsections 16(1) and 16(2)); if the employee obtains household services or attendant care services as a result of that injury (sections 29 and 29A); or
- loss of, or damage to, ‘property used by an employee’ (subsections 4(1) and 15(1)).

If compensation is payable under the SRC Act, some or all of that compensation may have to be repaid, or offset against other compensation payments, in certain circumstances.

Relevantly, compensation must be repaid or offset in accordance with section 119 if:

- an employee recovers ‘State compensation’ in respect of an ‘injury’ or the loss of, or damage to, ‘property used by the employee’; or
- ‘State compensation’ is recovered by, or for the benefit of, a dependant of a deceased employee.

This explanatory statement concerns the operation of section 119 and the legislative instrument made under subsection (7) of that section.

Purpose and effect of section 119 of the SRC Act

The purpose of section 119 is to prevent employees or their dependants from receiving both compensation under the SRC Act and ‘State compensation’ in prescribed circumstances.

‘State compensation’ means compensation recoverable under a law of a State or Territory that provides for the payment of compensation (other than workers’ compensation, which is covered by section 118 of the SRC Act) and is declared by the Minister by legislative instrument to be a ‘specified law’ for the purposes of the SRC Act (subsection 119(7)).

Subject to subsections 119(4), (5) and (6), an employee or dependant is only entitled to receive or retain so much of the compensation that is payable or was paid under the SRC Act in respect of an ‘injury’, or loss or damage to ‘property used by the employee’, that exceeds the amount of compensation recovered under a ‘specified law’:

- by the employee in respect of that ‘injury’, loss or damage; or
- by, or for the benefit of, the dependant, in respect of that ‘injury’ resulting in death (subsections 119(2) and (3)).

Safety, Rehabilitation and Compensation (Specified Laws) Declaration 2017

The Safety, Rehabilitation and Compensation (Specified Laws) Declaration 2017 (‘Declaration’) is made under subsection 119(7) of the SRC Act.

The Declaration is a legislative instrument for the purposes of the Legislation Act 2003.

The Declaration will commence the day after it is registered on the Federal Register of Legislation.
Repeal of the Safety, Rehabilitation and Compensation (Specified Law) Notice 2007 (1)

The Safety, Rehabilitation and Compensation (Specified Law) Notice 2007 (1) (F2007L02004) (‘sunsetting instrument’) commenced on 1 July 2007 and will sunset (that is, it will automatically be repealed) on 1 October 2017 in accordance with subsection 50(1) of the Legislation Act 2003.

It is intended the Declaration will commence before 1 October 2017. To avoid there being two legislative instruments made under subsection 119(7) of the SRC Act, operating concurrently, the sunsetting instrument will be repealed on commencement of the Declaration.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required (ID 22528).

Consultation

The draft list of laws specified in this instrument, as well as an explanation of the background and operation of the instrument, was sent out for consultation by email to the licensed corporations in the Comcare scheme. Feedback was invited by return email, or at the Licensee Liaison Forum of 21 June 2017.

The same consultation email was also sent to the Australian Council of Trade Unions (ACTU), as well as to a sample of premium paying Commonwealth authorities and Entities chosen in consultation with Comcare to reflect large, medium and small agencies.

No concerns were raised in feedback about the content of this instrument and there was general consensus that the remaking of this updated instrument was necessary and machinery in nature.

Schedule 1—Specified laws

Schedule 1 of the Declaration:

- includes State and Territory laws under which compensation is recoverable for injury, or loss or damage to certain property;
- updates references to State or Territory laws, which have been repealed or replaced since the sunsetting instrument commenced on 1 July 2007;
- includes laws of the Christmas Island Territory and the Cocos (Keeling) Islands Territory under which compensation is recoverable for injury, or loss or damage to certain property; and
- removes references to State and Territory laws under which compensation for injury, or loss or damage to certain property, is not recoverable.

Schedule 2—Repeals

The Safety, Rehabilitation and Compensation (Specified Law) Notice 2007 (1) (F2007L02004) is repealed.
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 Laws) Declaration 2017

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’) relevantly provides workers’ compensation for employees of the Commonwealth and licensed corporations, members of the Australian Defence Force with certain defence service prior to 1 July 2004, and their dependants.

The purpose of this instrument is to prevent the double receipt of compensation under the SRC Act and a State or Territory law.

This legislative instrument is made in anticipation of the sunsetting of the Safety, Rehabilitation and Compensation (Specified Law) Notice 2007 (1) (F2007L02004). It updates the list of specified laws to include current State or Territory laws under which compensation is recoverable, and to remove any State or Territory laws which have been repealed or under which compensation is not recoverable.

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’. 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.

The SRC Act operates to ensure an employee (or a dependant of an employee) is compensated for loss they suffer due to an injury, or the loss of, or damage to, certain property used by the employee.

An employee (or the dependant of an employee) who chooses to recover an amount of compensation under a specified law will still be entitled to receive an amount of compensation at least equal to the amount that is payable under the SRC Act.

Section 119 of the SRC Act and this legislative instrument operate to ensure that an employee (or the dependant of an employee) cannot ‘double dip’ by being compensated twice under two different laws for the same injury, or loss or damage to certain property.

Conclusion

The legislative instrument is compatible with human rights because it does not negatively impact on human rights.

Senator the Hon Michaelia Cash

Minister for Employment

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