

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment

Safety, Rehabilitation and Compensation Act 1988

Subsection 5(6)

Safety, Rehabilitation and Compensation (Definition of *Employee*) Amendment Notice 2015

Amending: Commonwealth Employees' Rehabilitation and Compensation Act 1988 – Notice of Declarations and Specifications (Notice No. 1 of 1990) (F2009B00123)

Safety, Rehabilitation and Compensation Act 1988 – Notice of Declaration under subsection 5(6) (Notice No. V1 of 1995) (F2009B00112)

The *Safety, Rehabilitation and Compensation Act 1988* ('the SRC 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 SRC Act. Under subsection 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 a Commonwealth authority, are taken to be employed by the Commonwealth authority for the purposes of the SRC Act.

Subsection 33(3) of the *Acts Interpretations Act 1901*, which applies by virtue of section 13 of the *Legislative Instruments Act 2003*, provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

The Commonwealth Employees' Rehabilitation and Compensation Act 1988 – Notice of Declarations and Specifications (Notice No. 1 of 1990) ('the 1990 Notice') is dated 22 August 1990 and was registered on the Federal Register of Legislative Instruments on 3 February 2009 (F2009B00123). The 1990 Notice was made under subsection 5(6) of the *Commonwealth Employee's Rehabilitation and Compensation Act 1988*. It provides workers' compensation coverage for persons who assist, without receiving any remuneration (other than payment of expenses incurred), in the running of the 'Australian National Gallery'.

The *Commonwealth Employee's Rehabilitation and Compensation Act 1988* was retitled the SRC Act following amendments by the *Commonwealth Employees' Rehabilitation and Compensation Amendment Act 1992* and the *Industrial Relations and other Legislation Amendment Act 1993*.

'The Australian National Gallery' is now known as the 'National Gallery of Australia'. The Amendment Notice, made under subsection 5(6) of the SRC Act, omits reference to the 'Australian National Gallery' in the 1990 Notice and substitutes a reference to the 'National Gallery of Australia' to ensure that persons who meet the other requirements of the 1990 Notice are taken to be employed by the Commonwealth authority for the purposes of the SRC Act.

The Safety, Rehabilitation and Compensation Act 1988 – Notice of Declaration under subsection 5(6) (Notice No. V1 of 1995) ('the 1995 Notice') is dated 20 February 1995 and was registered on the Federal Register of Legislative Instruments on 2 February 2009 (F2009B00112). The 1995 Notice

provides workers' compensation coverage for persons who assist, without receiving any remuneration (other than payment of expenses incurred), in the running of the 'National Museum of Australian'.

This Amendment Notice corrects a typographical error in the name of the 'National Museum of Australia' in the 1995 Notice and substitutes a reference to the 'National Museum of Australia'.

This declaration was made at the request of the Minister for the Arts and in liaison with the Attorney-General's Department. Further consultation was not undertaken as the declaration is of minor or machinery nature and does not substantially alter existing arrangements.

These amendments are technical in nature and seek to give effect to existing regulations so that a Regulatory Impact Statement is not required (OBPR ID 19487).

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.

Statement of Compatibility with Human Rights

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

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in 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* ('the SRC Act') establishes the Commonwealth workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations.

The SRC Act provides that persons may be declared by the Minister to be employees of the Commonwealth, a Commonwealth authority or a licensed corporation for the purposes of the SRC Act. This has the effect that the specified persons will be covered by the SRC Act.

The Amendment Notice contains technical amendments that correct the titles of the relevant Commonwealth authorities included in the Commonwealth Employees' Rehabilitation and Compensation Act 1988 – Notice of Declarations and Specifications (Notice No. 1 of 1990) (F2009B00123) and the Safety, Rehabilitation and Compensation Act 1988 – Notice of Declaration under subsection 5(6) (Notice No. V1 of 1995) (F2009B00112). The amendments ensure that persons who meet the other requirements of the Notices are taken to be employed by the Commonwealth authority 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 'States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work'.^[1]

The SRC Act provides support for employees who have been injured at work by way of weekly compensation payments, payment of medical expenses, permanent impairment benefits and other benefits. The Amendment Notice amends Notices that positively engage the right to social security by extending the coverage of the SRC Act (and therefore access to workers' compensation) to volunteers who would not be otherwise covered by the SRC Act.

Conclusion

The Amendment Notice is compatible with human rights because it advances the protection of human rights by extending coverage of the SRC Act, and therefore workers' compensation coverage, to volunteers who would not otherwise be covered by the SRC Act.

Senator The Hon Michaelia Cash

Minister for Employment