

EXPLANATORY STATEMENT

Safety, Rehabilitation and Compensation Act 1988

Issued by the Minister for Jobs and Industrial Relations

Safety, Rehabilitation and Compensation (Declarations and Specifications) Repeal Instrument 2019

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. Prior to 24 December 1992, the short title of the SRC Act was the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*.

This instrument repeals two instruments made under the SRC Act.

1. *Commonwealth Employees' Rehabilitation and Compensation Act 1988 - Notice of Declarations and Specification (Notice No. 5 of 1991)*

On 11 December 1991, four declarations and specifications were made in the *Commonwealth Employees' Rehabilitation and Compensation Act 1988 - Notice of Declarations and Specification (Notice No. 5 of 1991)* instrument (the 1991 Instrument) pursuant to section 97 and subsections 4(1) and 5(6) of the SRC Act.

Three of the four declarations and specifications made in the 1991 Instrument are now redundant and no longer required:

- (i) Commonwealth Telecommunications Interim Board Limited was deregistered on 1 June 1993 and, at that time, ceased to be a body corporate that satisfies the definition of 'Commonwealth authority' in subsection 4(1) of the SRC Act (item 1);
- (ii) Marine Management Service Pty Ltd has ceased to be a body corporate in which a body corporate declared under paragraph (c) of the definition of 'Commonwealth authority' in subsection 4(1) of the SRC Act (namely, ANL Limited) has a controlling interest. Accordingly, Marine Management Service Pty Ltd has ceased to be a body corporate that satisfies the definition of 'Commonwealth authority' in subsection 4(1) of the SRC Act (item 2); and
- (iii) Section 97 of the SRC Act was repealed and replaced on 1 July 2002 by the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001*. On and from this date, the power to specify the penalty rate for late payment of premiums payable after 1 July 2002 was prescribed by subsection 97P(1) of the SRC Act. The rate of interest for the purposes of subsection 97P(1) is currently specified by the Minister in the *Safety, Rehabilitation and Compensation (Rates of Interest Payable) Notice 2016* (item 4).

The declaration made pursuant to subsection 5(6) of the SRC Act in item 3 of the 1991 Instrument, in relation to persons who assist in the running of the Australian War Memorial, is still required. However, the 1991 Instrument is scheduled to sunset on 1 April 2019 by operation of the *Legislation Act 2003*. This instrument repeals the 1991 Instrument in its entirety so that the declaration made in item 3 of the 1991 Instrument can be remade in a new legislative instrument that is exempt from sunset. This instrument and the new legislative instrument will commence at the same time to ensure there is no gap in coverage in respect of persons who assist in the running of the Australian War Memorial.

2. Commonwealth Employees' Rehabilitation and Compensation Act 1988 - Notice of Declarations (Notice No. 2 of 1992)

On 20 May 1992, five declarations were made in the *Commonwealth Employees' Rehabilitation and Compensation Act 1988 - Notice of Declarations (Notice No. 2 of 1992)* instrument (the 1992 Instrument) pursuant to subsections 4(1) and 5(6) of the SRC Act.

Four of the five declarations made in the 1992 Instrument are now redundant and no longer required:

- (i) Australian Marine Science and Technology Limited was deregistered on 18 February 2010 and, at that time, ceased to be a body corporate that satisfies the definition of 'Commonwealth authority' in subsection 4(1) of the SRC Act (item 1);
- (ii) Totalcare Industries Limited was deregistered on 2 May 2012 and, at that time, ceased to be a body corporate that satisfies the definition of 'Commonwealth authority' in subsection 4(1) of the SRC Act (item 1);
- (iii) Filtron Pty Ltd has ceased to be a body corporate in which a body corporate declared under paragraph (c) of the definition of 'Commonwealth authority' in subsection 4(1) of the SRC Act (namely, CSL Limited) has a controlling interest. Accordingly, Filtron Pty Ltd has ceased to be a body corporate that satisfies the definition of 'Commonwealth authority' in subsection 4(1) of the SRC Act (item 2);
- (iv) The declaration made pursuant to subsection 5(6) of the SRC Act, in relation to persons who assist in the running of the Australian National Botanic Gardens, was repealed by the *Notice of Declaration and Revocation under section 5(6)* in Commonwealth Gazette No. GN 35 on 6 September 2000 but has not yet been removed from the 1992 Instrument (item 3).

The declaration made pursuant to subsection 5(6) of the SRC Act in item 3 of the 1992 Instrument, in relation to persons who assist in the running of the Great Barrier Reef Marine Park Authority, is still required. However, the 1992 Instrument is scheduled to sunset on 1 April 2019 by operation of the *Legislation Act 2003*. This instrument repeals the 1992 Instrument in its entirety so that the declaration made in item 3 of the 1992 Instrument can be remade in a new legislative instrument. This instrument and the new legislative instrument will commence at the same time to ensure there is no gap in coverage in respect of persons who assist in the running of the Great Barrier Reef Marine Park Authority.

Commencement

This instrument commences at the same time as the *Safety, Rehabilitation and Compensation (Specified Persons and Acts) Declaration 2019* (the 2019 Declaration).

It is anticipated that the 2019 Declaration will consolidate all declarations made under subsection 5(6) of the SRC Act, beginning with the two declarations repealed by this instrument:

- the declaration in respect of persons assisting in the running of the Australian War Memorial (see the 1991 Instrument); and
- the declaration in respect of persons assisting in the running of the Great Barrier Reef Marine Park Authority (see the 1992 instrument).

If the 2019 Declaration does not commence, this instrument will have no effect, and both the 1991 Instrument and 1992 Instrument will sunset on 1 April 2019 in accordance with section 50 of the *Legislation Act 2003*.

Consultation

This instrument was made following consultation with the Australian Capital Territory Government and Comcare. Further consultation was not undertaken as the instrument is machinery in nature. It repeals redundant declarations and specifications that are no longer required and facilitates the remaking of certain declarations under subsection 5(6) of the SRC Act.

Regulation Impact Statement

The Office of Best Practice Regulation was consulted regarding this instrument and indicated that neither a Regulation Impact Statement, nor a certification letter, was required (OBPR ID: 24734).

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

This instrument takes effect at the same time as the commencement of the *Safety, Rehabilitation and Compensation (Specified Persons and Acts) Declaration 2019*.

Statement of Compatibility with Human Rights

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

Safety, Rehabilitation and Compensation (Declarations and Specifications) Repeal Instrument 2019

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. Prior to 24 December 1992, the short title of the SRC Act was the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*.

This instrument repeals the *Commonwealth Employees' Rehabilitation and Compensation Act 1988 - Notice of Declarations and Specification (Notice No. 5 of 1991)* and the *Commonwealth Employees' Rehabilitation and Compensation Act 1988 - Notice of Declarations (Notice No. 2 of 1992)* in their entirety to repeal redundant declarations and specifications and to facilitate the remaking of certain declarations under subsection 5(6) of the SRC Act in a new legislative instrument, namely the *Safety, Rehabilitation and Compensation (Specified Persons and Acts) Declaration 2019*.

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.

Human rights implications

This instrument is machinery in nature and does not engage any of the applicable rights or freedoms. It repeals redundant declarations and specifications made under the SRC Act without affecting the past operation of those declarations. It also allows certain declarations made pursuant to subsection 5(6) of the SRC Act to be maintained in a new legislative instrument so that the declarations are not automatically repealed pursuant to the sunset provisions of the *Legislation Act 2003*.

As this instrument will commence at the same time as the commencement of the new declaration instrument, there will be no gap in coverage for persons covered by the ongoing declarations.

Conclusion

This legislative instrument is compatible with human rights because it does not raise any human rights issues.

The Hon Kelly O'Dwyer

Minister for Jobs and Industrial Relations