



## Employee coverage under the SRC Act

### Purpose

To provide decision makers with scheme guidance on who is covered for workers' compensation under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

### Background

When a workers' compensation claim is received under the SRC Act, a decision maker must be satisfied that the claim was made by, or on behalf of, an employee as defined under the SRC Act. If a person does not meet the definition of an employee, they are not eligible for workers' compensation coverage under the SRC Act.

Section 5 of the SRC Act sets out the definition of employee for the purpose of compensation coverage and includes a person who is:

- > employed by the Commonwealth<sup>1</sup> or a Commonwealth authority<sup>2</sup>; or
- > employed by a corporation with a licence to self-insure under the SRC Act.

The SRC Act applies to current employees and those whose employment has ended, provided the connection between the employee's injury and employment is established.<sup>3</sup>

Section 5 of the SRC Act further expands the meaning of employee and outlines certain circumstances where a person will be considered an employee for the purposes of the SRC Act, including those taken to be employed by the Commonwealth and those declared by the Minister<sup>4</sup> to be employees. It also outlines exclusions for certain persons who are not covered by the SRC Act.

This scheme guidance outlines what decision makers should consider when deciding whether a person is an employee for the purposes of the SRC Act.

<sup>1</sup> 'Commonwealth' is defined in section 4 and has additional meaning given in subsection 5(7) of the SRC Act.

<sup>2</sup> 'Commonwealth Authority' is defined in section 4 of the SRC Act.

<sup>3</sup> Section 5(9) of the SRC Act.

<sup>4</sup> Section 5(6) of the SRC Act.

# Guidance

## Who is covered by the SRC Act

### Employed by the Commonwealth or a Commonwealth authority

A person employed by the Commonwealth or a Commonwealth authority is an employee for the purpose of the SRC Act if they are employed either under:

- > a law of the Commonwealth or a Territory
- > a contract of service
- > an apprenticeship.<sup>5</sup>

When establishing whether a person engaged by the Commonwealth or a Commonwealth authority is an employee for the purposes of the SRC Act, consideration must be made as to whether they were engaged under a *contract of service* (in which case, they are an employee) as opposed to a *contract for service* (in which case they are engaged as a contractor).

### Contract of service

Where a person is engaged by the Commonwealth or a Commonwealth authority under a contract of service, they will generally be considered an employee for the purposes of the SRC Act, and workers' compensation coverage may apply, subject to usual tests of liability. Although contract of service is not defined in the SRC Act, whether a person is engaged under a contract of service is an important consideration. This will depend on the specific facts of each case and the interpretation of the contract terms and the rights and obligations they create, rather than how the arrangement is carried out in practice.<sup>6</sup> Relevant characteristics may include, but are not limited to:

- > The Commonwealth or Commonwealth authority had the power to hire the person engaged for the job.
- > Remuneration is in the form of wages and the Commonwealth or Commonwealth authority deducts tax and pays superannuation.
- > The person engaged is being paid directly by the Commonwealth or Commonwealth authority, and not through a separate company.
- > The Commonwealth or Commonwealth authority has the right to supervise and control the way the person does their work and fulfils their obligations, i.e. the employer can decide the place of work and the hours of work.
- > The employment conditions (i.e. leave entitlements) align with Australian Public Service (APS) or agency arrangements, including any applicable Enterprise Bargaining Agreement (EBA).
- > The employee is an integral part of the employer's business and is not running their own business (i.e. an independent contractor or operating independently).
- > The person engaged is subject to the Commonwealth or a Commonwealth authority's disciplinary standards and can be suspended or dismissed, i.e. the person would be subject to the APS Code of Conduct and any other internal department policies which provide guidance and standards of behaviour.

No single factor is decisive, and all relevant circumstances should be considered. If these characteristics do not apply, it may indicate that the person was engaged under a contract for service, rather than a contract of service.

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<sup>5</sup> Section 5(1)(a) of the SRC Act.

<sup>6</sup> Re Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd [2022] HCA 1

## Contract for service

A person who is engaged by the Commonwealth or a Commonwealth authority under a contract for service is unlikely to be an employee for the purposes the SRC Act and coverage for workers' compensation will not apply. Although the term contract for service is not referenced in the SRC Act, certain characteristics may indicate a contract for service, including but not limited to:

- > The Commonwealth or Commonwealth authority engages a company, firm or some other similar party to perform a specific service for the agency.
- > The company or firm is responsible for providing relevant people to perform a specific service.
- > The Commonwealth or Commonwealth authority will pay the company or firm for the service rather than paying wages to the person.
- > The company or firm is responsible for paying the person they engage to perform the service rather than the Commonwealth or Commonwealth authority.
- > The company or firm exercises a high level of control over how the work is performed.
- > The Commonwealth or a Commonwealth authority is not responsible for the supervision of the person engaged to perform the service.
- > The person engaged by the company or firm is not subject to the Commonwealth or Commonwealth authority's disciplinary standards or internal department policies in relation to guidance and standards of behaviour. Any concerns with the person engaged by the company or firm are dealt with by the company or firm. The person operates a business on their own account (for example, as a contractor).
- > The person supplies their own tools or equipment.

No single factor is decisive, and all relevant circumstances should be considered when assessing whether the person was engaged under a contract of service rather than a contract for service.

### Example – Contract for service

One evening, while mopping the kitchen area of a Commonwealth agency's office building, a cleaner slips and sustains a knee injury. The cleaner subsequently lodges a workers' compensation claim under the SRC Act for the injury.

In assessing whether the cleaner is an employee under the SRC Act, the decision maker reviews the contractual arrangements and establishes the following:

- > the Commonwealth agency entered into a contract with a commercial cleaning company for the provision of cleaning services, rather than directly with the cleaner;
- > the cleaner was engaged by the cleaning company to provide services to that company, not to the Commonwealth agency;
- > there was no contractual relationship between the cleaner and the Commonwealth agency;
- > the Commonwealth agency did not pay the cleaner, nor did it deduct tax or provide superannuation;
- > the Commonwealth agency did not direct or control how the cleaner carried out their work; and
- > the cleaner was not subject to the Commonwealth agency's employment framework, including applicable conduct or workplace policies.

Based on these factors, the decision maker concludes that the cleaner is not an employee of the Commonwealth agency. Therefore, the cleaner is not an employee for the purposes of section 5(a) of the SRC Act and liability for the claim is denied.

## Holder of an office

A person who holds, or is acting in an office is, for the purposes of the SRC Act, taken to be employed by the Commonwealth while performing the duties of that office if the office is:

- > established under a law of the Commonwealth, unless the Minister has declared by legislative instrument that the SRC Act does not apply to that office; or
- > established under a law of a Territory (excluding ACT enactments or laws of the Northern Territory) that has been declared by the Minister, through legislative instrument, to be covered by the SRC Act.<sup>7</sup>

For example, this may include the National Anti-Corruption Commissioner and the Australian Electoral Commissioner.

## Employees who work for Members of parliament

Employees who work for Members of Parliament are engaged under different employment arrangements compared to other Commonwealth employees. They are employed on behalf of the Commonwealth under the *Members of Parliament (Staff) Act 1984* (MOPS Act).<sup>8</sup> Although they are not employed under the *Public Service Act 1999* (like most Commonwealth employees), they are still considered to be persons employed by the Commonwealth and therefore fall within the definition of employee under section 5 of the SRC Act.

## Persons declared by the Minister to be Commonwealth employees

Under section 5(6) of the SRC Act, the Minister may issue a legislative instrument declaring that certain people or classes of people, are employees of the Commonwealth, a Commonwealth authority, or a licensed corporation (notice of declaration). This applies to people who engage in activities or perform acts that are:

- > at the request or direction, for the benefit, or requirement made under a law of the Commonwealth; or
- > at the request or direction, for the benefit of a Commonwealth authority or licensed corporation.

Compensation coverage is limited to performance of the specific acts identified in the relevant notice of declaration issued under the SRC Act.<sup>9</sup>

All notices of declaration made under section 5(6) of the SRC Act are available on the [Federal Register of Legislation](#) and can also be found on [Comcare's website](#).

## Board members, committee or other body or group of persons

Under item 11 of the [Safety, Rehabilitation and Compensation \(Definition of Employee\) Notice 2007 \(2\)](#) (2007 Notice), the Minister has declared for the purposes of section 5(6) of the SRC Act that a person<sup>10</sup> is taken to be employed by the Commonwealth if they are nominated or appointed to a board, committee or other body or group of persons (other than a body corporate) by an appropriate body.<sup>11</sup> This generally includes formally constituted boards or committees established, required or endorsed by the Commonwealth (for example, statutory or governance committees). Further consideration will be required where the group is informal, convened by a third party, or does not involve a clear appointment by an appropriate body.

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<sup>7</sup> Section 5(2)(c) of the SRC Act.

<sup>8</sup> [MOP\(S\) Act employment I Ministerial and Parliamentary Services](#)

<sup>9</sup> Section 5(6)(b) of the SRC Act.

<sup>10</sup> Excluding State Ministers, State Parliamentarians, and holders of judicial or statutory offices.

<sup>11</sup> Appointment, nomination or approval must be given by the Governor-General, a Minister of the State, a Commonwealth authority, a member of the Australian Public Service or a person holding, or acting in, an office of a Territory of the Commonwealth (other than the Northern Territory or the Territory of Norfolk Island) ([Federal Register of Legislation - Safety, Rehabilitation and Compensation \(Definition of Employee\) Notice 2007 \(2\)](#)).

## Volunteers

Volunteers are generally not covered under the SRC Act unless they have been specifically deemed as an employee by the Minister under section 5(6) of the SRC Act.<sup>12</sup>

A list of directions, instruments and notices are available on the [Comcare website](#) which includes Ministerial Declarations that have been made under subsection 5(6) for volunteers.

## Employed by a corporation with a licence to self-insure under the SRC Act

Certain corporations, Commonwealth authorities and the Australian Capital Territory (ACT) hold licences to self-insure under the SRC Act. A [list of current and former self-insured licensees](#) is available on the Safety, Rehabilitation and Compensation Commission's (Commission) website.

The SRC Act provides workers' compensation for a person employed by a licensed corporation who:

- > performs work for that corporation under a law or a contract; and
- > would have been covered under the relevant State or Territory workers' compensation scheme applicable to the corporation had they not been a licensee under the SRC Act.<sup>13</sup>

The definition of employee for licensed corporations under the SRC Act is broader than the definition that applies to the Commonwealth and Commonwealth authorities. For licensed corporations, the definition refers only to a contract rather than to a contract of service.

Employee coverage for licensed corporations requires more than a person performing work under a contract. Whether a person is covered for compensation should be assessed and determined on a case-by-case basis. This means looking at the specific facts, including the terms of the contract, how the working relationship operates in practice, whether the scope of the licence excludes the person from coverage,<sup>14</sup> and whether there are any factors suggesting the person is working as an independent contractor.

Decision makers should remain up to date with workers' compensation arrangements in the relevant State or Territory, particularly where legislative amendments or precedent court decisions impact the definition or classification of employee groups.

## Licence scope

When assessing whether an employee of a licensee is covered under the SRC Act, a decision-maker will also need to have regard to any specific scope attached to the self-insurance licence as set by the Commission. SRC Act coverage can apply to some or all of the employees of the licensed corporation, depending on the scope of the licence.<sup>15</sup>

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<sup>12</sup> Under section 5(15) of the SRC Act, persons may be declared to be employees of the Australian Capital Territory for the purposes of the SRC Act, including volunteers.

<sup>13</sup> Section 5(1A) of the SRC Act.

<sup>14</sup> Section 108(1) of the SRC Act provides that a self-insurance licence may authorise a licensed corporation to accept liability to pay compensation for injuries suffered by some or all of its employees.

<sup>15</sup> Section 108(1) of the SRC Act.

## Employees of the ACT

The Commission granted the ACT a licence to self-insure which commenced on 1 March 2019. Unlike other licensees, the SRC Act has certain provisions relating specifically to the ACT when it comes to coverage.

Section 5(11) of the SRC Act sets out a range of persons and offices which are taken to be employed by the ACT. This includes, but is not limited to:<sup>16</sup>

- > employees of ACT statutory authorities
- > employees under the *Legislative Assembly (Members' Staff) Act 1989* (ACT)
- > the Commissioner, Deputy Commissioner and members of the Australian Capital Territory Fire Brigade under the *Fire Brigade (Administration) Act 1974* (ACT)
- > a member of the ACT Fire and Rescue Service within the meaning of the *Emergencies Act 2004* of the Australian Capital Territory.

Section 5(12) of the SRC Act provides that the Minister, at the written request of the Chief Minister of the ACT, may declare that the SRC Act does not apply to an authority, body or office which otherwise would be taken to be employed by the ACT. To date, the Minister has not exercised this power.

## Persons declared by the Minister to be employees of the ACT

Under section 5(15) of the SRC Act, the Minister may, if requested in writing by the Chief Minister of the ACT, declare certain persons to be taken to be employed by the ACT for the purposes of the SRC Act when engaged in activities that are:

- > at the request, direction or for the benefit of the ACT; or
- > in accordance with a requirement made by or under an ACT enactment; or
- > at the request or direction, or for the benefit, of an authority or body established by an ACT enactment.

To date, the Minister has not exercised this power.

## Members of the Australian Federal Police

In relation to the Australian Federal Police (AFP), the Commissioner, any Deputy Commissioner and AFP employees within the meaning of the *Australian Federal Police Act 1979* are employees for the purposes of the SRC Act.<sup>17</sup>

## Persons working in specific places or roles

### Locally engaged overseas employees

Commonwealth agencies and licensees may engage employees outside Australia (hired and entered into a contract of employment while overseas) to work and carry out duties outside of Australia. These employees may be Australian citizens or foreign nationals and are referred to as Locally Engaged Overseas Employees (LEOEs).

Section 117 of the SRC Act outlines the workers' compensation arrangements for LEOEs and applies to a person who:

- > meets the definition of an employee under section 5 of the SRC Act;
- > was engaged outside Australia for employment outside Australia; and
- > is carrying out the duties of their employment outside Australia.<sup>18</sup>

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<sup>16</sup> Please refer to s 5(11) for the full list and exclusions outlined in s 5(14).

<sup>17</sup> Section 5(2)(a) of the SRC Act.

<sup>18</sup> Section 117(1) of the SRC Act.

Section 117 does not apply when an employee is engaged outside of Australia and performs duties of their employment within Australia. If the person travels to Australia for the purpose of employment, is working within Australia, and is an employee as defined under section 5 of the SRC Act, workers' compensation coverage will be determined under the usual provisions of the SRC Act.

Section 117 of the SRC Act establishes a tiered approach to workers' compensation coverage for LEOEs, depending on the availability of compensation schemes and insurance arrangements in the country of employment:

- > If the employee is covered by a workers' compensation scheme in the country where they are employed, the SRC Act does not apply. The employee is covered under the local scheme.<sup>19</sup>
- > If the employee is not directly covered by the local scheme, but other classes of employees working for the same employer are covered, the employee is entitled to the same compensation benefits by the local scheme.<sup>20</sup> In this circumstance, the relevant authority<sup>21</sup> must assess liability and ensure benefits are paid in accordance with the local scheme. The employee is not entitled to benefits under any other provisions of the SRC Act.
- > If the employee is not directly covered by the local scheme, but there is a scheme that applies to persons employed by that country's government, that compensation scheme will apply to the employee.<sup>22</sup> In this circumstance, the relevant authority must apply the provisions of that scheme and pay benefits accordingly. The employee would not be entitled to benefits under any other provisions of the SRC Act.
- > If there is no workers' compensation scheme in the country of employment, the employee is covered under the SRC Act, and the usual provisions will apply.

**Example – Where an employee is not covered by the local scheme, but other classes of employees working for the same employer are covered**

An employee working as a groundskeeper at the Australian Embassy in Bangladesh sustains an injury while mowing the lawn and submits a claim for workers' compensation under the SRC Act.

The decision-maker identifies that the groundskeeper was employed by the embassy outside Australia for duties related to maintaining the gardens at the embassy in Bangladesh. The decision-maker understands that coverage under the SRC Act in such circumstances is limited and turns to section 117 to understand how to assess the employee's claim.

Through enquiries made to the embassy, the decision-maker understands that the employee is not directly covered under a foreign workers' compensation scheme and therefore the exclusion of payments under section 117(2) of the SRC Act does not apply.

The decision-maker then turns their mind to section 117(3) of the SRC Act and investigates whether other workers at the embassy would be covered under a local workers' compensation scheme that is in force. After enquiries with the embassy and research of the Bangladeshi legislative provisions, the decision-maker found that while the local workers' compensation scheme does not cover groundskeepers, it does provide coverage for landscapers.

As section 117(3) of the SRC Act applies, the decision maker assesses the claim and determines compensation in accordance with the local compensation scheme (applicable to Bangladesh), as the employee is in a similar class to landscapers working at the Embassy, and is therefore covered by the local scheme.

19 Section 117(2) of the SRC Act.

20 Section 117(3) of the SRC Act.

21 Section 4 of the SRC Act defines 'relevant authority' as, in relation to an employee who is employed by a licensee – the licensee; and in relation to any other employee – Comcare

22 Section 117(4) of the SRC Act.

## Employees temporarily located overseas

In most cases, the SRC Act does not differentiate between geographical locations for the purposes of coverage. Where a person is engaged as an employee in Australia and subsequently travels to or resides overseas as part of their employment, or is overseas on leave and recalled to perform specific duties, the standard provisions of the SRC Act will apply.<sup>23</sup>

An exception applies when an employee is directed to travel overseas to a declared place nominated by the Minister under section 6(1)(h) of the SRC Act. In such cases, any injury occurring during work or non-work related activities will be deemed to have arisen out of or in the course of employment, provided the activity does not fall within the exclusionary provisions. Current declared places can be found on Comcare's [Instruments and notices issued under the SRC Act](#) page or the [Federal Register of Legislation](#).

## Employees on secondments

Coverage of a seconded employee under the SRC Act depends on the specific terms of the secondment arrangement. Generally, the agency responsible for paying the employee's salary will also hold responsibility for workers' compensation coverage.

When establishing whether a person who is on secondment is an employee for the purposes of the SRC Act, a decision-maker should consider:

- > which entity is paying the employee's salary and related benefits
- > the terms of any memorandum of understanding (MoU) or agreement between the parties
- > the nature of the employment relationship during the secondment (i.e. whether the person will continue to be an employee of the home agency).

### Example – Commonwealth employee on secondment with State Government

A Commonwealth employee seconded to a State government role continues to receive their salary and associated benefits from their Commonwealth agency throughout the secondment. The MoU confirms that the individual remains a Commonwealth employee during this period. In such circumstances, it is likely that any injury sustained during the secondment would be subject to the SRC Act, with the Commonwealth agency remaining the liable employer.

## Who is not covered by the SRC Act

### Members of the Australian Defence Force

Members of the Australian Defence Force (ADF) are not considered employees for the purpose of the SRC Act.<sup>24</sup> This includes:

- > members of the permanent ADF (Australian Army, Royal Australian Navy, Royal Australian Air Force)
- > members of the Reserve Forces
- > cadets and Officers, including Cadet Instructors
- > persons deemed by the Minister for Defence to be members of the ADF.

<sup>23</sup> Section 3 of the SRC Act.

<sup>24</sup> Section 5(17) of the SRC Act.

Comcare and the Commission have no liability for injuries, property loss or damage, or deaths related to defence service.<sup>25</sup> Claims involving current or former ADF personnel may be managed under either the *Military Rehabilitation and Compensation Act 2004* (MRCA), *Veterans' Entitlements Act 1986* (VEA) or the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA), all of which are administered by the Department of Veteran Affairs (DVA). From 1 July 2026, the *Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Act 2025* will streamline veteran compensation by closing VEA and DRCA to new claims, with all future claims determined under an improved MRCA.

Civilian employees of the Department of Defence who are employed by the Commonwealth are considered employees for the purposes of the SRC Act.

## Members of Parliament and Ministers of State

Coverage under the SRC Act does not apply to a member of Parliament or a Minister of State.<sup>26</sup> Claims made by Parliamentarians, including the spouse of the Prime Minister, may be managed under the Parliamentary Injury Compensation Scheme (PICS) which was established by the [Parliamentary Injury Compensation Scheme Instrument 2016](#) and covers injuries suffered on or after 1 January 2016. These claims are administered by Comcare.

## Certain Judges

The SRC Act does not apply to a person who is a Judge, as defined in section 4(1) of the *Judges' Pensions Act 1968*.<sup>27</sup> This includes a Judge who is:

- > a Justice or Judge of a federal court of Australia or the Family Court of Australia (other than the Federal Circuit and Family Court of Australia (Division 2)), or a person who by virtue of an Act has the same status as that Justice or Judge
- > a person who was a Judge of the Supreme Court of the Australian Capital Territory immediately before the commencement of the *A.C.T Supreme Court (Transfer) Act 1992*
- > a Papua New Guinea Judge.

## Employees of the Public Service of an external Territory

An officer or employee of the Public Service of an external Territory (such as Norfolk Island), as distinct from an APS employee employed under the *Public Service Act 1999*, is not covered by the SRC Act and is instead covered by the relevant Territory workers' compensation scheme.

## Seamen

Seafarers are covered under the *Seafarers Rehabilitation and Compensation Act 1992* and are not covered by the SRC Act.<sup>28</sup>

## More information

For more information about coverage under the SRC Act, please contact Comcare's Scheme Policy team on 1300 366 979 or email: [schemepolicyanddesign@comcare.gov.au](mailto:schemepolicyanddesign@comcare.gov.au).

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<sup>25</sup> Section 4AA of the SRC Act

<sup>26</sup> Section 5(8)(a) of the SRC Act

<sup>27</sup> Section 5(8)(b)

<sup>28</sup> Section 5(8)(d) of the SRC Act.