

WORKERS' COMPENSATION AND INJURY MANAGEMENT AMENDMENT BILL 2013

EXPLANATORY MEMORANDUM

OVERVIEW

The purpose of this Bill is to provide a rebuttable presumption in favour of firefighters who contract any one of 12 cancers for the purpose of accessing workers' compensation entitlements under the *Workers' Compensation and Injury Management Act 1981*.

CLAUSE 1. SHORT TITLE

Sets out the name of the Amendment Act.

CLAUSE 2. COMMENCEMENT

Provides that the operative provisions of the Amendment Act come into operation on the day after the Act receives the Royal Assent. No proclamation notice will be required.

CLAUSE 3. ACT AMENDED

The *Workers' Compensation and Injury Management Act 1981* is the principal act to be amended.

CLAUSE 4. PART III DIVISION 4A INSERTED

Section 49A. Terms used

Defines terms used in the new Division 4A relating to the date of injury, qualifying period and specified diseases covered by the presumption.

Section 49B. Application of Division

Division 4A of the Act will apply to a worker who has contracted a specified disease if:

- the date of injury was on or after the Amendment Act comes into operation (i.e. applies prospectively); and
- on the date of injury the worker is a member or officer of a permanent fire brigade established under the *Fire Brigades Act 1942* (i.e. employed on the date of injury by the Department of Fire and Emergency Services).

Section 49C. When employment as firefighter taken to contribute to specified disease

Section 49C(1) provides for the rebuttable presumption, subject to certain criteria.

Employment as a firefighter is taken to have been a contributing factor and to have contributed to a significant degree to the specified disease, unless the employer proves the contrary.

This will make it easier for firefighters to claim workers' compensation entitlements by overcoming the evidentiary requirements of proving an occupational link between firefighting and the applicable cancer that would otherwise apply under the definition of 'injury' in section 5(1) – paragraph (c) - of the principal Act.

For the presumption to apply the worker must have been, before the date of injury, employed as a firefighter for at least the qualifying period for the specified disease and exposed to the hazards of a fire scene in the course of employment.

As is the case under similar Commonwealth laws the presumption is rebuttable.

Section 49C(2) captures within the scope of the qualifying period for the specified disease two or more periods of employment that equal or exceed the applicable qualifying period. This clarifies that periods of employment as a firefighter can be added together to meet the qualifying period in the event a firefighter has served discrete periods of employment as a firefighter.

Section 49C(3) clarifies the phrase 'employed as a firefighter' which is intended to cover firefighters who are officers of a permanent fire brigade established under the *Fire Brigades Act 1942*. This covers career firefighters employed by the Department of Fire and Emergency Services if firefighting duties made up a substantial portion of the worker's duties.

Section 49D. Date of injury

The date of injury is relevant for determining whether the amendment Act applies under section 49B and is a reference point for applying the qualifying periods for employment as a firefighter under section 49C.

Under subsection (1) the date of injury in relation to a worker who has contracted a specified disease is the earlier of –

- (a) the day on which the worker became totally or partially incapacitated for work by reason of the specified disease;
- (b) the day on which the worker was first diagnosed by a medical practitioner as having contracted the specified disease.

Subsection (2) puts beyond doubt that the date of injury established under subsection (1) applies for the purposes of the Act. For example, section 178 of the Act requires workers to give notice and claim for compensation within 12 months from the occurrence of the injury.

Section 49E. Review of Division

This section provides for a mandatory review of the operation and effectiveness of Division 4A every five years.

CLAUSE 5. SCHEDULE 4A INSERTED

Provides for the 12 specified primary site cancers and applicable qualifying periods. Item 13 provides a head of power for additional cancers to be prescribed should there be appropriate scientific evidence in the future.