

WORKERS REHABILITATION AND COMPENSATION AMENDMENT (FIRE-FIGHTERS) BILL 2013

CLAUSE NOTES

PRELIMINARY

Clause 1 Short Title

*Cites the Act as the *Workers Rehabilitation and Compensation Amendment (Fire-fighters) Act 2013*.*

Clause 2 Commencement

The Act is to commence on the day the Act receives Royal Assent.

Clause 3 Principal Act

The *Workers Rehabilitation and Compensation Act 1988* is referred to as the Principal Act.

Clause 4 Sections 27 and 28 inserted

Inserts sections 27 and 28 after section 26 in the Principal Act.

Section 27 27. Presumption as to cause of certain diseases in relation to fire-fighters

- Subsection (1)** This subsection deems that, in the absence of evidence to the contrary, a worker's employment as a fire-fighter is taken to have contributed to a substantial degree to an injury that is a disease, where the worker is:
- suffering a disease referred to in Schedule 5; and
 - the disease occurs on or after the date the legislation commences; and
 - the disease either occurs during employment as a fire-fighter, or within 10 years after the worker is

- no longer employed as a fire fighter; and
- before the disease occurred, the worker has been employed as a fire-fighter for the qualifying period specified for that disease in Schedule 5; and
- the worker has had the relevant number of exposure events.

The relevant number of exposure events is 520 in any 10 year period of employment, or 260 in any 5 year period of employment in the case of primary site brain cancer or leukemia. This will prevent the presumption applying to a person who has long service but little exposure to the hazards of fire.

It is intended that the presumption is limited to a period of 10 years post retirement or resignation as a fire fighter. This limit applies to both career and volunteer fire-fighters. A fire-fighter may claim after that time but would not be able to rely on the legal presumption.

The presumption will not have retrospective application.

The presumption will not apply if under section 25(2) of the Principal Act, compensation is not payable as a result of the worker willfully and falsely representing himself in writing as not having previously suffered from the disease at the time of entering his employment.

Subsection (2) clarifies that any references to being ‘employed as a fire-fighter’, are intended to cover persons employed as career fire-fighters as well as those engaged as volunteer fire-fighters under the *Fire Service Act*.

Subsection (2)

Any references to ‘employment as a fire-fighter’ include those persons engaged as volunteer fire-fighters.

Paragraph (c) clarifies when a period of employment for a volunteer begins and ends, that is, it begins on the first day on which the person is a volunteer and ends on the day on which the person ceases to be volunteer fire-fighter.

The subsection provides that cumulative periods of employment as a fire-fighter can be considered for the purpose of calculating the qualifying period specified in Schedule 5.

- Subsection (3)** This subsection clarifies when a fire-fighter has an exposure event. A worker has an exposure event if the worker attends at an incident as a fire-fighter which is recorded in accordance with the incident reporting system approved by the Chief Officer under the *Fire Service Act 1979*. Multiple attendances at any one incident are taken to be a single exposure event. An incident which is defined as an avoidable call-out will not be counted as an exposure event. These are incidents where it is unlikely that there will be any exposure to the hazards of fire-fighting operations.
- Subsection (4)**

For the purpose of this section only, the Bill clarifies that a worker is taken to suffer the disease, on the day the worker is first diagnosed as suffering from the disease, or the day they become totally or partially incapacitated or die because of the disease, whichever occurs first.

- Subsection (5)** The subsection clarifies that the requirement that workers must meet the relevant number of exposure events for the presumption to apply, does not apply to career fire-fighters who commenced employment before 1 July 1998. This is because incident exposure data was not collected before that date.

- Subsection (6)** This subsection provides a mechanism for the Minister to amend the list of diseases included in Schedule 5. The Minister may, by order, amend Schedule 5 by varying or rescinding any matter, or by adding a disease and a qualifying period to the Schedule.

A number of definitions are included.

An avoidable call-out is defined to identify incidents that will not count as exposure events for the purposes of the

Subsection (7) section. Generally these are incidents of a type where a fire-fighter would not normally be exposed to hazardous materials.

Subsection (8) A career fire-fighter is defined as a worker who is appointed or employed under section 24 of the *Fire Service Act 1979*, and who occupies or has occupied during that employment or appointment, a position classified as a “fire-fighter”, “station officer” or “district officer” under the industrial award which applies to persons who carry out fire-fighting operations.

Chief Officer which has the same meaning that it has under the *Fire Service Act 1979*.

A fire-fighter is defined as a career fire-fighter and a volunteer fire-fighter.

The term fire-fighting operations in relation to volunteer fire-fighters, has the same meaning as it has under section 5(3) of the Principal Act. It includes attending any meeting, competition, or demonstration related to the prevention, control or extinguishment of fires, which is taken to be training. In relation career fire-fighters, it has the same meaning as it has under the *Fire Service Act 1979*.

The term fire prevention operations has the same meaning that it has under section 5(3) of the Principal Act. It includes attending any meeting, competition, or demonstration related to the prevention, control or extinguishment of fires, which is taken to be training.

A volunteer fire-fighter is defined as a person who, otherwise than under a contract for services, a contract of service, or training agreement with the Secretary of the responsible Department in relation to the *Fire Service Act* or the State Fire Commission or any brigade within the meaning of the *Fire Service Act*, engages in fire-fighting operations or fire prevention operations with the consent of or under the authority of or in co-operation with a person or body referred to previously. This

definition reflects the definition under section 5(1) of the Principal Act.

28. Review of operation of section 27

This section requires that the Minister must ensure that a review of the operation of section 27 is undertaken and completed by the end of 12 months after the section commences operation.

The person who undertakes the review must provide a written report of the review to the Minister as soon as practicable after it is completed.

The Minister is required to have the report laid before each House of Parliament within 10 sitting days after the report is provided.

Section 28

Schedule 5 inserted

Inserts Schedule 5 after Schedule 4 in the Principal Act.

Schedule 5 – Diseases, of Fire-Fighters, in respect of which there is a presumption of cause

Schedule 5 details each of the twelve primary site cancers to which the presumption applies and the qualifying period for each of those cancers. The cancers and the qualifying periods mirror those which apply under the *Safety, Rehabilitation and Compensation Act 1988 (Commonwealth)*.

Clause 5

Schedule 5 also makes provision for additional cancers to be prescribed, and for a qualifying period to be prescribed to those cancers. This provision will allow for cancers to be added to the list if future medical research suggests that there are strong links between employment as a fire-fighter and the contraction of a cancer.

Repeal of Act

This clause repeals this Act a year from the day on which

it commences.

WORKERS REHABILITATION AND COMPENSATION AMENDMENT (FIRE-FIGHTERS) BILL 2013

CLAUSE NOTES

Clause 4 – AMENDED	Sections 27 and 28 inserted
Clause 6	27. Presumption as to cause of certain diseases in relation to fire-fighters
Subsection (1)(d)	<p>The exposure requirement provision detailed in this subsection applies to a worker to whom subsection (6) applies. Subsection (6) applies to a worker who is a volunteer fire-fighter for the qualifying period, or a worker who is a volunteer fire-fighter and career fire-fighter where the qualifying period cannot be satisfied without taking into account the period the worker is a volunteer fire-fighter.</p> <p>The relevant number of exposure events is 260 in any 10 year period of employment, or 260 in any 5 year period of employment in the case of primary site brain cancer or leukemia. This will prevent the presumption applying to a person who has long service but</p>

little exposure to the hazards of fire.

Subsection (6)

Subsection (6) is replaced with the following provision.

The exposure requirement specified in subsection 1(d) applies to a worker:

- (a) who is a volunteer fire-fighter for the qualifying period specified in column 2 of Schedule 5; or
- (b) who is a volunteer fire-fighter for part of the qualifying period and a career fire-fighter for another part of the period, and the worker does not meet the qualifying period without taking into account a period of work as a volunteer fire-fighter.

Subsection (7)

This subsection provides a mechanism for the list of diseases included in Schedule 5 to be varied, rescinded or added to by Regulations. This includes adding a qualifying period where a disease is added to the list.

Subsection (8)

In the definition of “career fire-fighter” (b) refers to a worker who occupies, or has occupied a position classified as a “fire-fighter”, “station officer”, “senior station officer” or “district officer” under the industrial award that relates to persons carrying out fire-fighting

operations.

28. Review of operation of section 27

Subsection (1)

Provides that the Minister must cause a review of the operation of section 27 to be undertaken and completed as soon as practicable after 12 months from the commencement of the section and then every 12 months after the completion of each previous review.

Clause 5

Schedule 5 inserted

Item 13 is removed.