

FACT SHEET

Workers Rehabilitation and Compensation Amendment (Presumption as to Cause of Disease) Bill

The *Workers Rehabilitation and Compensation Amendment (Presumption of Cause as to Disease) Bill 2019* (the Bill) proposes amendments to the *Workers Rehabilitation and Compensation Act 1998* (the Act) to establish a rebuttable presumption that Post-Traumatic Stress Disorder (PTSD) suffered by relevant workers is work related for the purpose of workers compensation.

The insertion of presumption as to cause of post-traumatic stress disorder at section 28A will shift the onus of proof from the worker to the employer. Where presumption applies, it will be assumed in the first instance that the worker's employment contributed to a substantial degree to that injury. The presumption is rebuttable on evidence to the contrary.

The presumption therefore does not remove the possibility of a dispute in relation to the claim. If an employer disputes causation, the worker may still be required to participate in relevant processes to resolve the dispute.

The evidence necessary to rebut the presumption is evidence that the worker's employment did not contribute to a substantial degree to the injury. Where there is evidence of that nature, the Workers Rehabilitation and Compensation Tribunal will determine whether the evidence is sufficient to rebut the presumption.

The presumption will not apply if the worker is not eligible for compensation in accordance with section 25(1A). This includes, but is not limited to, situations where mental health injuries arise from reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline or counsel a worker or to bring about cessation of a worker's employment.

The presumption will also not apply if under section 25(2) of the Principal Act, compensation is not payable as a result of an injury which is attributable to the serious and wilful misconduct of the worker (unless the injury results in the death or serious impairment) or an intentional self-inflicted injury.

The changes do not apply retrospectively. The presumption will apply to all undecided cases and to new claims if the injury occurred before commencement.

The presumption proposed by the Bill will apply to 'relevant workers', being a worker who is employed by:

- the Crown or appointed under an Act of the State;
- a Government Business Enterprise; and
- a State-owned company.

Under the Act, volunteers engaged in fire-fighting operations or fire prevention operations; volunteers engaged in ambulance services; and volunteers performing police operations are taken to be workers employed by the Crown.

Section 56 of the *Emergency Management Act 2006* also specifies that, for the purposes of the *Workers Rehabilitation and Compensation Act*, a volunteer emergency management worker who participates in emergency management or a rescue and retrieval operation is taken to be a worker employed by the Crown while engaging in that emergency management or rescue and retrieval operation.

This means that volunteer fire-fighters, volunteer ambulance officers, Police volunteers and volunteer emergency management workers, as described above, are eligible for compensation under the Act and will be classed as relevant workers to which PTSD presumption will apply.

The Bill also removes a requirement for the a statutory review of workers compensation provisions relating to post-traumatic stress disorder because that review has been completed in accordance with section 162A of the Act.

The *Ministerial Review Relating to Establishing Entitlements under the Workers Rehabilitation and Compensation Act 1988 for Workers Suffering Post Traumatic Stress Disorder* (the Report) was tabled in both Houses of Parliament on 25 September 2018.