



New South Wales

# Workers Compensation Legislation Amendment (Firefighters) Act 2018 No 93

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New South Wales

# **Workers Compensation Legislation Amendment (Firefighters) Act 2018 No 93**

Act No 93, 2018

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An Act to amend workers compensation legislation to establish presumptive rights to compensation for firefighters in respect of certain cancers. [Assented to 28 November 2018]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Workers Compensation Legislation Amendment (Firefighters) Act 2018*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 1 [3]–[6] commence on the date of assent to this Act.

## Schedule 1      **Amendment of Workers Compensation Act 1987 No 70**

### [1]    **Section 19A**

Insert after section 19:

#### **19A    Presumptions relating to certain cancers—firefighters**

- (1) In the application of this Act to a worker who is an eligible firefighter, it is presumed (unless the contrary is established) that the disease contracted by the worker was contracted in the course of the worker's firefighting employment and that employment was:
  - (a) for the purposes of the definition of *disease injury* in section 4, a contributing factor to contracting the disease, and
  - (b) for the purposes of section 9A, a substantial contributing factor to contracting the disease.

**Note.** Amendments made to section 9A and the definition of *disease injury* in section 4 by Schedule 7 to the *Workers Compensation Legislation Amendment Act 2012* do not apply to police officers, paramedics or firefighters. See clause 25 of Part 19H of Schedule 6 to this Act.
- (2) A worker is an *eligible firefighter* if the worker:
  - (a) has, at any time, been engaged in firefighting employment, and
  - (b) has contracted a disease that is a cancer of a kind specified in Schedule 4.
- (3) A worker has been engaged in *firefighting employment* if:
  - (a) the worker has, at any time, been employed by any person, body or agency (or former body or agency) prescribed for the purposes of this section by the regulations, and
  - (b) in the course of that employment, the worker has performed firefighting activities.
- (4) This section does not apply to a disease contracted by an eligible firefighter if the total aggregate period during which the worker has been engaged in firefighting employment as at the date of injury (*the service period*) is less than the qualifying service period specified for the disease in Schedule 4.
- (5) Any period during which an eligible firefighter has served in the capacity of an eligible volunteer firefighter is to be counted towards the service period.
- (6) However, any period during which the eligible firefighter concurrently serves as an eligible volunteer firefighter and engages in firefighting employment is to be counted once only.
- (7) For the purposes of the application of section 261 of the 1998 Act to a disease to which a presumption under this section applies, the period required by that section for the making of a claim for compensation in respect of the disease is taken to commence on the date of injury in relation to the disease (regardless of when the eligible firefighter or any other person first became aware of the disease).
- (8) Any compensation payable on the basis of a presumption under this section to an eligible firefighter who, on the last day of the service period, concurrently served as an eligible volunteer firefighter and engaged in firefighting employment with an employer is payable under this Act by that employer.

(9) In this section:

***date of injury***, in relation to a disease, means the date of whichever of the following occurs first:

- (a) the disease is first diagnosed by a medical practitioner,
- (b) the firefighter dies as a result of the disease.

***eligible volunteer firefighter*** means an official fire fighter within the meaning of Part 2 of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

***firefighting activities*** means any of the following activities performed by a worker:

- (a) extinguishing, controlling or preventing the spread of fire,
- (b) bush fire hazard reduction work within the meaning of the *Rural Fires Act 1997*,
- (c) the provision of training or instruction in the performance of an activity referred to in paragraph (a) or (b) resulting in exposure of the worker to smoke or other hazards of fire.

[2] **Schedule 4**

Insert after Schedule 3:

## **Schedule 4 Firefighters' diseases**

| <b>Column 1</b>                 | <b>Column 2</b>                  |
|---------------------------------|----------------------------------|
| <b>Disease</b>                  | <b>Qualifying service period</b> |
| Primary site brain cancer       | 5 years                          |
| Primary leukaemia               | 5 years                          |
| Primary site breast cancer      | 10 years                         |
| Primary site testicular cancer  | 10 years                         |
| Primary site bladder cancer     | 15 years                         |
| Primary site kidney cancer      | 15 years                         |
| Primary non-Hodgkin lymphoma    | 15 years                         |
| Multiple myeloma                | 15 years                         |
| Primary site prostate cancer    | 15 years                         |
| Primary site ureter cancer      | 15 years                         |
| Primary site colorectal cancer  | 15 years                         |
| Primary site oesophageal cancer | 25 years                         |

[3] **Schedule 6 Savings, transitional and other provisions**

Insert after Part 19J:

**Part 19K Provisions consequent on enactment of Workers Compensation Legislation Amendment (Firefighters) Act 2018**

**1 Existing diseases**

- (1) An eligibility provision extends to a disease contracted by a firefighter in relation to which either of the following occurred before the commencement of the eligibility provision (an *existing disease*):
  - (a) the disease was first diagnosed by a medical practitioner,
  - (b) the firefighter died as a result of the disease.
- (2) However, an eligibility provision does not extend to a disease contracted before 27 September 2018 unless:
  - (a) a claim for compensation is made under the relevant compensation Act in respect of the disease before the commencement of the eligibility provision, and
  - (b) liability for the claim has been denied, and the grounds on which liability has been denied include that the disease was not contracted in the course of the worker's employment or that the employment was not a contributing factor, or a substantial contributing factor, to contracting the disease.
- (3) For the purposes of the application of an eligibility provision to an existing disease, the date of injury in relation to the disease is taken to be the date on which the provision commences.
- (4) A further claim for compensation may be made under the relevant compensation Act in respect of an existing disease to which an eligibility provision applies if, before the commencement of the eligibility provision:
  - (a) a claim for compensation was made under that Act (whether or not the claim has also been the subject of proceedings in the Commission or a court), and
  - (b) liability for the claim is denied on the ground that the disease was not contracted in the course of the worker's employment or that the employment was not a contributing factor, or a substantial contributing factor, to contracting the disease.
- (5) However, a further claim for compensation may not be made as provided by subclause (4) if liability for the claim is denied on any ground other than a ground referred to in that subclause.
- (6) In this clause:

*eligibility provision* means section 19A of, and Schedule 4 to, the 1987 Act, or section 10A of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*, as inserted by the firefighters' diseases amending Act.

*firefighters' diseases amending Act* means the *Workers Compensation Legislation Amendment (Firefighters) Act 2018*.

*relevant compensation Act*, in relation to a claim for compensation, means the 1987 Act or the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* under which the claim is made.

**2 Review of amendments relating to firefighters**

- (1) The Minister is to review the amendments made to the workers compensation legislation by the *Workers Compensation Legislation Amendment (Firefighters) Act 2018* to determine whether the policy objectives of those amendments remain valid and whether the terms of the amendments remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after 1 January 2020.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament before 1 January 2021.

**[4] Schedule 6, Part 20**

Insert after clause 1 (3):

- (3A) A provision referred to in subclause (1) that is consequent on the enactment of an Act that is assented to after 27 September 2018 may, if the regulations so provide, take effect from a date that is earlier than the date of assent to that Act.
- (3B) Subclauses (3) and (6) do not limit the operation of this clause in its application to regulations containing provisions of a saving or transitional nature consequent on the enactment of an Act that is assented to after 27 September 2018.

**[5] Schedule 6, Part 20**

Omit “subclause (1)” from clause 1 (4). Insert instead “subclause (1) or (3A)”.

**[6] Schedule 6, Part 20**

Omit “Subject to subclause (6), the” from clause 1 (5). Insert instead “The”.

## Schedule 2      **Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83**

### Section 10A

Insert after section 10:

#### 10A Presumptions relating to certain cancers—firefighters

- (1) In the application of this Act to an eligible volunteer firefighter, it is presumed (unless the contrary is established) that:
  - (a) the disease contracted by the worker was contracted in the course of fighting a bush fire, and
  - (b) the fighting of the bush fire was a contributing factor to the disease.
- (2) This section applies to an official fire fighter (an *eligible volunteer firefighter*) who:
  - (a) in the capacity of an official fire fighter, has at any time performed firefighting activities, and
  - (b) has contracted a disease that is a cancer of a kind specified in Schedule 4 to the Principal Act.
- (3) This section does not apply to a disease contracted by an eligible volunteer firefighter if the total aggregate period during which the eligible volunteer firefighter has served as an official fire fighter as at the date of injury (*the service period*) is less than the qualifying service period specified for the disease in Schedule 4 to the Principal Act.
- (4) Any period during which an eligible volunteer firefighter has been engaged in firefighting employment is to be counted towards the service period.
- (5) However, any period during which the eligible volunteer firefighter concurrently performs service as an official fire fighter and engages in firefighting employment is to be counted once only.
- (6) For the purposes of the application of section 261 of the 1998 Act to a disease to which a presumption under this section applies, the period required by that section for the making of a claim for compensation in respect of the disease is taken to commence on the date of injury in relation to the disease (regardless of when the eligible volunteer firefighter or any other person first became aware of the disease).
- (7) In this section:

*date of injury*, in relation to a disease, means the date of whichever of the following occurs first:

  - (a) the disease is first diagnosed by a medical practitioner,
  - (b) the official fire fighter dies as a result of the disease.

*firefighting activities* and *firefighting employment* have the same meanings as in section 19A of the Principal Act.

## **Schedule 3      Amendment of Workers Compensation Regulation 2016**

### **Clause 5A**

Insert after clause 5:

#### **5A    Firefighting bodies and agencies**

The following bodies and agencies are prescribed for the purposes of section 19A of the 1987 Act:

- (a) the NSW Rural Fire Service,
- (b) Fire and Rescue NSW,
- (c) the Office of Environment and Heritage,
- (d) the Forestry Corporation,
- (e) Sydney Trains.

[Second reading speech made in—

Legislative Assembly on 24 October 2018

Legislative Council on 22 November 2018]