



New South Wales

# Workers Compensation (Firefighters' Presumptive Rights to Compensation) Bill 2018

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to establish presumptive rights to workers compensation under the *Workers Compensation Act 1987* and the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* for firefighters suffering from certain kinds of cancer.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

**Clause 3** provides that the proposed Act is to be construed with, and as if it formed part of, the *Workers Compensation Act 1987* (**the 1987 Act**), the *Workplace Injury Management and Workers Compensation Act 1998* (**the 1998 Act**) and the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* (**the volunteer firefighters compensation Act**). The proposed Act prevails to the extent of any inconsistency with those Acts.

**Clause 4** defines certain words and expressions used in the proposed Act, including **occupational disease** (which is defined to mean certain kinds of cancer).

**Clause 5** defines **eligible firefighter** to mean a worker (within the meaning of the 1987 Act) who is employed as a firefighter or performs firefighting duties as a substantial part of the worker's employment (an **employed firefighter**) or an official fire fighter within the meaning of Part 2 of the volunteer firefighters compensation Act (a **volunteer firefighter**). The clause also defines **service period**.

**Clause 6** provides for a rebuttable presumption that an occupational disease contracted by an employed firefighter was contracted in the course of the firefighter's employment and that the employment was the main contributing factor to contracting the disease. The presumption operates for the purposes of claims for compensation under the 1987 Act. That Act limits compensation for disease injuries to diseases that are contracted, aggravated, accelerated or exacerbated, or that deteriorate, in the course of employment (where the employment is the main contributing factor).

**Clause 7** provides for a rebuttable presumption that an occupational disease contracted by a volunteer firefighter was contracted in the course of fighting a bush fire and that the fighting of the bush fire was the main contributing factor to contracting the disease. The presumption operates for the purposes of claims for compensation under the volunteer firefighters compensation Act. That Act limits compensation for disease injuries generally to diseases that are contracted, aggravated, accelerated or exacerbated, or that deteriorate, in the course of fighting a bush fire (where the fighting of a bush fire is a contributing factor).

**Clause 8** limits the presumptions to occupational diseases contracted during, or within 10 years after, the service period for the firefighter concerned. For that purpose, a disease is taken to have been contracted when it is first diagnosed by a medical practitioner or when the firefighter dies as a result of the disease (whichever occurs first).

**Clause 9** further limits the presumptions to firefighters whose service period is not less than the minimum period specified for the occupational disease concerned. For example, the minimum service period is specified as 5 years for primary site brain cancer, 10 years for primary site breast cancer, 15 years for primary site bladder cancer and 25 years for primary site oesophageal cancer.

**Clause 10** removes a restriction relating to the time for commencing a claim in relation to an occupational disease.

**Clause 11** contains a transitional provision that extends the proposed Act to occupational diseases contracted before the commencement of the provision. The clause also removes a restriction on the making of a further claim or medical assessment under the 1987 Act or the 1998 Act in respect of a disease to which a presumption under the proposed Act applies.

## **Schedule 1 Occupational diseases**

Schedule 1 contains a list of occupational diseases for the purposes of the proposed Act.



New South Wales

# Workers Compensation (Firefighters’ Presumptive Rights to Compensation) Bill 2018

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New South Wales

# **Workers Compensation (Firefighters' Presumptive Rights to Compensation) Bill 2018**

No. , 2018

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## **A Bill for**

An Act to establish presumptive rights to workers compensation for firefighters suffering from certain kinds of cancer.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Workers Compensation (Firefighters' Presumptive Rights to Compensation) Act 2018</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6
<b>3 Relationship to workers compensation Acts</b>	7
(1) This Act is to be construed with, and as if it formed part of, the following Acts:	8
(a) the 1987 Act,	9
(b) the 1998 Act,	10
(c) the volunteer firefighters compensation Act.	11
(2) In the event of an inconsistency between this Act and the 1987 Act, the 1998 Act or the volunteer firefighters compensation Act, this Act prevails to the extent of the inconsistency.	12 13 14
<b>4 Definitions</b>	15
(1) In this Act:	16
<i>eligible firefighter</i> —see section 5.	17
<i>employed firefighter</i> —see section 5.	18
<i>occupational disease</i> means a disease specified in Schedule 1.	19
<i>service period</i> —see section 5.	20
<i>the 1987 Act</i> means the <i>Workers Compensation Act 1987</i> .	21
<i>the 1998 Act</i> means the <i>Workplace Injury Management and Workers Compensation Act 1998</i> .	22 23
<i>the volunteer firefighters compensation Act</i> means the <i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</i> .	24 25
<i>volunteer firefighter</i> —see section 5.	26
<b>Note.</b> The <i>Interpretation Act 1987</i> contains definitions and other provisions that affect the interpretation and application of this Act.	27 28
(2) Notes included in this Act do not form part of this Act.	29
<b>5 Firefighters</b>	30
(1) An <i>eligible firefighter</i> is a person who is an employed firefighter or a volunteer firefighter.	31 32
(2) An <i>employed firefighter</i> is a worker who:	33
(a) is employed as a firefighter, or	34
(b) performs firefighting duties as a substantial part of his or her employment.	35
(3) <i>Volunteer firefighter</i> has the same meaning as official fire fighter has in Part 2 of the volunteer firefighters compensation Act.	36 37
(4) The <i>service period</i> for an eligible firefighter is the total period during which the firefighter is employed as a firefighter (including where the employment involves the performance of firefighting duties as a substantial part of the employment) or is engaged as a volunteer firefighter (or both).	38 39 40 41

<b>6</b>	<b>Diseases presumed to be work related—employed firefighters</b>	1
	For the purposes of the 1987 Act, it is presumed (unless the contrary is established) that:	2
		3
	(a) an occupational disease contracted by an employed firefighter was contracted in the course of the firefighter's employment, and	4
		5
	(b) the employment was a substantial contributing factor to contracting the disease.	6
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<b>7</b>	<b>Diseases presumed to be work related—volunteer firefighters</b>	8
	For the purposes of the volunteer firefighters compensation Act, it is presumed (unless the contrary is established) that:	9
		10
	(a) an occupational disease contracted by a volunteer firefighter was contracted in the course of fighting a bush fire, and	11
		12
	(b) the fighting of a bush fire was a contributing factor to contracting the disease.	13
<b>8</b>	<b>Disease must be contracted during or within 10 years after service</b>	14
(1)	A presumption under this Act does not apply to an occupational disease contracted by an eligible firefighter before the start of, or more than 10 years after the end of, the service period of the firefighter.	15
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		17
(2)	For the purposes of this section, an occupational disease is taken to have been contracted by an eligible firefighter when the earlier of the following occurs:	18
		19
	(a) the disease is first diagnosed by a medical practitioner,	20
	(b) the firefighter dies as a result of the disease.	21
<b>9</b>	<b>Firefighters must have minimum service period</b>	22
	A presumption under this Act does not apply to an occupational disease contracted by an eligible firefighter whose service period is less than the period specified for the disease in Column 2 of the table in Schedule 1.	23
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		25
<b>10</b>	<b>No time limit for making claim</b>	26
	Section 261 of the 1998 Act does not apply in relation to a claim for compensation in respect of an occupational disease made on the basis of a presumption under this Act.	27
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<b>11</b>	<b>Transitional provision for existing occupational diseases</b>	30
(1)	This Act extends to existing occupational diseases.	31
(2)	An <i>existing occupational disease</i> is an occupational disease contracted by a firefighter before the commencement of this section.	32
		33
(3)	A further claim for compensation may be made under the Workers Compensation Acts or the volunteer firefighters compensation Act in respect of an existing occupational disease if:	34
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		36
	(a) a claim for compensation has been made under those Acts and rejected or withdrawn before the commencement of this section (whether or not the claim has also been the subject of proceedings in the Commission or a court), and	37
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	(b) a presumption under this Act applies to the disease.	40

## Schedule 1 Occupational diseases

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<b>Column 1</b>	<b>Column 2</b>
<b>Disease</b>	<b>Minimum 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-Hodgkins lymphoma	15 years
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

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