

SAFETY, REHABILITATION AND COMPENSATION AMENDMENT
(PRESCRIBED CANCERS) REGULATIONS 2022

EXPLANATORY STATEMENT

Issued by authority of the Minister for Employment and Workplace Relations
under the *Safety, Rehabilitation and Compensation Act 1988*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) establishes the Commonwealth workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations.

Subject to the SRC Act, liability to provide rehabilitation and make certain compensation payments arises in respect of an 'injury' suffered by an employee. For the purposes of the SRC Act, an 'injury' is defined by section 5A to include a 'disease' suffered by an employee. A disease is defined by section 5B of the SRC Act to mean an ailment, or an aggravation of an ailment, that was contributed to, to a significant degree, by the employee's employment.

Section 7 of the SRC Act outlines a number of provisions relating to diseases, including subsection 7(8) which outlines the circumstances in which employment as a firefighter (for a prescribed qualifying period) is deemed to have contributed, to a significant degree, to the contraction of the particular diseases specified in that provision, unless the contrary is established.

Item 13 of the table included at subsection 7(8) of the SRC Act provides that additional cancers and corresponding qualifying periods can be prescribed for the purposes of subsection 7(8) of the Act.

Section 122 of the SRC Act provides the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Pursuant to subsection 7(8) and section 122 of the SRC Act the *Safety, Rehabilitation and Compensation Amendment (Prescribed Cancers) Regulations 2022* (the Amendment Instrument) amends the *Safety, Rehabilitation and Compensation Regulations 2019* to prescribe the following eight additional cancers and corresponding qualify periods for the purposes of subsection 7(8) of the SRC Act:

- (i) Primary site lung cancer with a qualifying period of 15 years;
- (ii) Primary site skin cancer with a qualifying period of 15 years;
- (iii) Primary site cervical cancer with a qualifying period of 10 years;
- (iv) Primary site ovarian cancer with a qualifying period of 10 years;
- (v) Primary site penile cancer with a qualifying period of 15 years;
- (vi) Primary site pancreatic cancer with a qualifying period of 10 years;
- (vii) Primary site thyroid cancer with a qualifying period of 10 years; and
- (viii) Malignant mesothelioma with a qualifying period of 15 years.

Consequently, if an employee suffers from one of the abovementioned cancers, and:

- before the disease was sustained, the employee was employed as a firefighter for the corresponding qualifying period prescribed for that cancer; and
- was exposed to the hazards of a fire scene during that period,

that employment is taken to have contributed, to a significant degree, to the contraction of the cancer for the purposes of the SRC Act, unless the contrary is established.

The Amendment Instrument commences on the day after the instrument is registered on the Federal Register. From this date, subsection 7(8) of the SRC Act will apply to decisions made under the SRC Act in relation to any of the eight prescribed cancers sustained by an employee on or after 4 July 2011.

CONSULTATION

This instrument was made in consultation relevant employee representatives, as well as the Australian Capital Territory Government.

REGULATION IMPACT STATEMENT

The Office of Impact Analysis was consulted regarding this instrument and indicated that a Regulation Impact Statement is not required (OBPR ID: 22-03743).

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Safety, Rehabilitation and Compensation Amendment (Prescribed Cancers) Regulations 2022

This legislative instrument is compatible with the human rights and freedoms recognised or declared by the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) establishes the Commonwealth workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations.

Subject to the SRC Act, liability to provide rehabilitation and make certain compensation payments arises in respect of an 'injury' suffered by an employee. For the purposes of the SRC Act, an 'injury' is defined by section 5A to include a 'disease' suffered by an employee. A disease is defined by section 5B of the SRC Act to mean an ailment, or an aggravation of an ailment, that was contributed to, to a significant degree, by the employee's employment.

Section 7 of the SRC Act outlines a number of provisions relating to diseases, including subsection 7(8) which outlines the circumstances in which employment as a firefighter (for a prescribed qualifying period) is deemed to have contributed, to a significant degree, to the contraction of the particular diseases specified in that provision, unless the contrary is established.

Item 13 of the table included at subsection 7(8) of the SRC Act provides that additional cancers and corresponding qualifying periods can be prescribed for the purposes of subsection 7(8) of the Act.

Section 122 of the SRC Act provides the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Pursuant to subsection 7(8) and section 122 of the SRC Act the *Safety, Rehabilitation and Compensation Amendment (Prescribed Cancers) Regulations 2022* (the Amendment Instrument) amends the *Safety, Rehabilitation and Compensation Regulations 2019* to prescribe the following eight additional cancers and corresponding qualify periods for the purposes of subsection 7(8) of the SRC Act:

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- (iv) Primary site ovarian cancer with a qualifying period of 10 years;
- (v) Primary site penile cancer with a qualifying period of 15 years;
- (vi) Primary site pancreatic cancer with a qualifying period of 10 years;
- (vii) Primary site thyroid cancer with a qualifying period of 10 years; and
- (viii) Malignant mesothelioma with a qualifying period of 15 years.

Consequently, if an employee suffers from one of the abovementioned cancers, and:

- before the disease was sustained, the employee was employed as a firefighter for the corresponding qualifying period prescribed for that cancer; and
- was exposed to the hazards of a fire scene during that period,

that employment is taken to have contributed, to a significant degree, to the contraction of the cancer for the purposes of the SRC Act, unless the contrary is established.

Human rights implications

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* provides for the right of everyone to social security, including social insurance. General Comment 19 by the Committee on Economic, Social and Cultural Rights elaborates on Article 9, stating that the ‘States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work’.¹

Workers’ compensation is analogous to social insurance in that it provides payment of wages and medical costs to employees for injuries occurring as a result of their employment.

The Amendment Instrument will assist firefighters covered by the SRC Act in relation to a claim made in respect of a disease of a kind specified in the instrument. It does this by enlivening subsection 7(8) of the SRC Act, which effectively reverses the onus of proof in relation to the specified disease. This reduces the evidentiary burden on the claimant for the purposes of establishing an entitlement to workers’ compensation and other benefits under the SRC Act.

Conclusion

The legislative instrument is compatible with human rights because it promotes human rights.

The Hon Tony Burke MP

Minister for Employment and Workplace Relations

¹ Committee on Economic, Social and Cultural Rights, *General Comment 19: The Right to Social Security (art. 9)*, U.N. Doc E/C.12/GC/19 (2008), [17].

NOTES ON SECTIONS

Section 1 – Name

Section 1 provides that the title of the instrument is the *Safety, Rehabilitation and Compensation Amendment (Prescribed Cancers) Regulations 2022*.

Section 2 – Commencement

Section 2 provides that the instrument is to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the instrument is made under the *Safety, Rehabilitation and Compensation Act 1988*.

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms

Schedule 1 – Amendments

Item 1 – Prescribed kinds of cancer

Item 1 amends Part 2 of the *Safety, Rehabilitation and Compensation Regulations 2019* to insert a new section 8A. Section 8A provides that, for the purposes of item 13 in the table in subsection 7(8) of the SRC Act, a kind of cancer specified in an item of the table included in section 8A, and the qualifying period specified in the item for that kind of cancer, are prescribed.

The Table in section 8A specifies the following cancers and qualifying periods for the purposes of subsection 7(8) of the SRC Act:

- (i) Primary site lung cancer with a qualifying period of 15 years;
- (ii) Primary site skin cancer with a qualifying period of 15 years;
- (iii) Primary site cervical cancer with a qualifying period of 10 years;
- (iv) Primary site ovarian cancer with a qualifying period of 10 years;
- (v) Primary site penile cancer with a qualifying period of 15 years;
- (vi) Primary site pancreatic cancer with a qualifying period of 10 years;
- (vii) Primary site thyroid cancer with a qualifying period of 10 years; and
- (viii) Malignant mesothelioma with a qualifying period of 15 years.

Item 2 – Application of amendments

Item 2 amends Part 5 of the *Safety, Rehabilitation and Compensation Regulations 2019* to insert a new section 36, which provides that section 8A, as inserted by the *Safety, Rehabilitation and Compensation Amendment (Prescribed Cancers) Regulations 2022*, applies in relation to a decision made under the Act (including a decision on reconsideration or review under Part VI of the Act), after the commencement of that instrument, in relation to a cancer mentioned in that section sustained by an employee on or after 4 July 2011.