

# Considerations relevant to disease claims

## Liability

- ✓ Legislative tests and initial liability

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- ✓ Decision making under the SRC Act

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## Introduction

The legislative test for whether an employee has suffered a disease is currently whether an employee has suffered an injury, being a disease, that was contributed to, to a significant degree, by the employee's employment. For further guidance refer to the [Injury and disease under the SRC Act](#) page.

This section contains additional considerations relevant to determining liability for disease claims including:

- the Legislative test for disease claims with a date of injury before 13 April 2007
- specified diseases and employment under section 7(1) of the SRC Act]
- greater incidence of disease under section 7(2) and 7(3) of the SRC Act]
- the deeming date of injury under section 7(4) of the SRC Act
- long latency diseases, and
- diseases impacting Firefighters.

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## Legislative test for disease claims with a date of injury before 13 April 2007

The [Safety, Rehabilitation, Compensation and Other Legislation Amendment Act 2007 \(SRCOLA 2007\)](#) amended the definition of injury contained in section 4 of the SRC Act. Although this definition has been amended, it still applies to claims with a date of injury before 13 April 2007.

Before 13 April 2007, a disease meant any ailment or aggravation of an ailment that was contributed to in a material degree by the employee's employment by the Commonwealth or a licensed corporation.

## Tests for establishing employment contribution

In considering whether the employment contributed in a material degree, you must weigh the available evidence, and make a determination as to whether there is a close connection between the employee's disease (or aggravation of disease) and their employment.

Guidance about the various tests that can be applied against claims when establishing if there is a sufficient employment contribution is provided below.

### Material

Material is not defined in section 4(1) of the SRC Act. The Full Federal Court in *Comcare v Canute* [2005] observed the use of the word 'material' imposes an 'evaluative threshold', in other words the employment contribution is measured. The Second Reading Speech 1988 indicates decision makers should establish whether there is a 'close connection' between employment and contraction or aggravation of a disease to meet the threshold of a material contribution.

### Close connection

For the purpose of working out if there is a close connection between the employee's employment and the ailment or aggravation concerned, section 5(B)(2) lists the matters that may be taken into account include, but are not limited to, the following:

- the duration of the employment.
- the nature of, and particular tasks involved in, the employment.
- any medical predisposition of the employee to the ailment or aggravation of the ailment.
- the activities of the employee not related to the employment.
- other matters affecting the employee's health.

### Contribution

Contribution is not defined in section 4(1) of the SRC Act. However, the second reading speech noted that:

*In determining whether employment contributed in a material degree to the contraction of a disease in a particular case, regard would be had to whether the employment in which the employee was engaged carried an inherent risk of the employee contracting the disease in question and whether some characteristic or feature of the employment tended to cause, aggravate or accelerate the disease.*

It can be seen that the mere fact of being employed does not, of itself, constitute a contribution.

## **Mental disorders – perception**

The decision in *Wiegand v Comcare (2002)* held that where there is an actual event in the workplace which creates a perception in the mind of the employee, if that perception contributes to an aggravation of a disease, whether the perception is reasonable or not, the disease will be compensable.

You are required to undertake an assessment of whether the employment itself contributed, in a material degree to the onset (or aggravation) of a disease. This is a question of fact and the nature of the perception, the disease and its relationship to the employment will need to be considered.

For compensation to be payable, there must be causal link from the incident or state of affairs, through the perception to the development of the disease. Through this process, it is necessary to establish a close connection between the employment and the development of the disease.

When considering claims for compensation for a mental disease, should:

- identify the nature of the claimed condition and what caused or contributed to the condition
- identify the event(s) that are claimed to have caused or contributed to the condition
- Identify what the employee's perception of the event(s) were
- obtain medical evidence regarding what it is about the employee's perception that materially contributed to the disease
- obtain medical evidence regarding what impact the event(s) had on the employee's perceptions, i.e. was the event more than a mere contributing factor, and

- obtain medical evidence relating to whether or not the perceptions were a part of the disease, i.e. did the disease cause the employee's perceptions.

You must then weigh the evidence obtained and assess whether the employment caused or aggravated the disease, i.e., was the employment more than a mere contributing factor.

For further guidance complete the online legislative training module [Determining liability – disease claims](#)

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## Specified diseases and employment – s(7)(1)

Section 7(1) of the SRC Act provides that:

- if a person suffers from a disease that has been specified by the Minister, by legislative instrument, as a disease related to employment of a specified kind, and
- the person was, before the symptoms of the disease became apparent, employed in Commonwealth employment of the specified kind
- the employment will be taken to have significantly contributed to the contraction of the disease, unless the contrary is established.

Note: This section relates only to the contraction of a disease and not an aggravation of a disease.

### Lists of specified diseases and employments

Since the commencement of the SRC Act, the Minister has specified a list of diseases and employments. The original list was based on the International Labour Organisation's List of Occupational Diseases 1934 and the connection between the disease and the employment exposure was not easily understood. This [legislative instrument](#) lists 28 occupational diseases and employments that involve exposure to risk and is available. It applies to diseases contracted before 1 October 2017.

On 3 October 2017 the Minister issued a legislative instrument declaring a new list of [specified diseases](#) (which applies to diseases contracted on or after 1 October 2017.)

The diseases excluded should be considered in the usual manner by reference to the definition of disease in Section 5B of the SRC Act.

**Note:** Claims for certain cancers contracted by firefighters are subject to presumptive coverage under section 7(8) of the SRC Act.

## Presumptive legislation

The deemed diseases list operates to streamline access to workers' compensation on the assumption that there is a high likelihood that the disease is work-related. The effect of this is to reverse the onus of proof once it is established that an employee:

- has contracted a disease that is on the list of specified diseases, and
- was or is engaged in employment of a specified kind before the disease was contracted.

Once these facts are established, an employee is not required to further establish that, on the balance of probabilities, his or her employment significantly contributed to the disease. This is presumed. However, this does not mean that the employee's claim will automatically be accepted. This presumption can be refuted where you have evidence that contradicts the presumed facts.

## Unless the contrary is established

Section 7(1) of the SRC Act provides that '... the employment will be taken to have significantly contributed to the contraction of the disease, unless the contrary is established'.

The responsibility of establishing the 'contrary', if applicable, rests with Comcare.

Prior to accepting a claim under section 7(1), you should ensure all relevant evidence is obtained and considered to ensure the 'contrary' is not established.

Examples of evidence that may require further investigation can include but is not limited to:

- genetic and other risk factors, family history, pre-existing, congenital, constitutional, or underlying conditions or any other health problems that may predispose a person to suffering the claimed disease (medical practitioners should be asked to list and address the significance of any factors unrelated to employment that have been relevant to the development of the condition)
- other causes or factors that can be attributed to the existence of the disease (e.g., smoking, lifestyle, personal hobbies that involve the use of certain chemicals)
- evidence provided by the employer that conflicts with the employee's claimed contentions (e.g., employment history, nature of duties, working conditions, where the work was conducted, level of exposure to causative agent, materials/equipment used, the process/work practices followed, tests conducted, environmental factors etc).

If the contrary is established, then section 7(1) does not apply.

Note: For claims with a date of injury on or after 1 October 2017, the deemed diseases report and the deemed diseases supplementary report will assist you in determining what specific evidence/medical questions should be investigated.

## Deemed diseases list

There are [44 specified diseases and employments \(items\)](#) in the current deemed disease list. Schedule 1 lists the diseases and the required employment duration, where relevant, involving work with a specified person or thing, or contact with or exposure to a specified agent or thing.

Schedule 2 specifies the agent or thing for the purpose of connecting the required employment with the contraction of occupational asthma (item 31 on the deemed diseases list).

## Minimum period of employment

The minimum period of employment specified in the deemed diseases list is based on section 6 of the *Deemed Diseases approach - information to support the update of the Comcare Scheme's current deemed diseases legislative instrument - August 2017* ([supplementary deemed disease report provided by Dr Tim Driscoll](#)).

Most of the 44 items specified in the deemed diseases list have a recommended minimum period of employment. To satisfy the requirements of an item where a minimum employment period is recommended:

- the employee must have engaged in one or more periods of employment of a kind specified for that item, and
- the period or the sum total of the periods (whether consecutive or not) of such employment, must be no less than the minimum employment period for that item.

Any period of non-scheme employment (employment not covered under the SRC Act) is not counted. The employee need not have worked with that person, thing or agent, or undertaken the activity specified, every working day. However, each disease specified is associated with a particular kind of employment and the minimum employment duration period for that disease is based on the typical work profile of that kind of employment.

## Other avenues of compensation

Where a disease claim does not qualify under section 7(1), you should continue to assess liability under the other liability provisions provided within the SRC Act. For example, in the event that the disease claimed is of a kind that is not prescribed in the deemed diseases list, you should consider section 7(2). In the event that coverage does not exist under section 7(2), you should consider the significant employment contribution test in section 5B of the SRC Act.

**Note:** If the disease meets any of the above tests the exclusionary provisions also need to be considered.

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# Process for assessing if section 7(1) applies to a claim

## 1. Review the evidence. Ensure that the evidence:

- confirms when the symptoms of the disease first became apparent
- specifies the condition the employee is suffering from
- establishes the employee's employment (i.e. duties, duration of employment, details of exposure, employment history etc).

## 2. Is the disease specified on the list of specified diseases?

- if yes, continue
- if no, proceed to assess liability under the other liability provisions provided by the SRC Act.

Note: If the date of injury (DOI) is on or after 1 October 2017 refer to the deemed disease list available [here](#)

## 3. Was the employee, at any time before symptoms first became apparent, engaged by the Commonwealth in employment of a specified kind before the disease was contracted?

- if yes, continue
- if no, proceed to assess liability under the other liability provisions provided by the SRC Act.

**Important:** If the DOI is before 1 October 2017 continue to step 6.

## 4. Has the employee been employed for the minimum period of employment (if applicable)?

- if yes, continue
- if no, proceed to assess liability under the other liability provisions provided by the SRC Act.

Note: You will need to refer to the [deemed disease report](#) and the [deemed diseases supplementary report](#) for further guidance.

5. Has the employee's employment, before the contraction of the disease, involved work with a specified thing, or contact with or exposure to a specified agent or thing?

- if yes, continue
- if no, proceed to assess liability under the other liability provisions provided by the SRC Act.

**Note:** You need to determine whether there has been exposure of sufficient duration and intensity to be reasonably capable of causing the development of the condition. You will need to refer to the [deemed disease report](#) and the [deemed diseases supplementary report](#) for further guidance.

6. Has the contrary been established?

- if yes, proceed to assess liability under the other liability provisions provided by the SRC Act
- if no, accept the claim under Section 14 of the SRC Act.

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## Greater incidence of disease – section 7(2) and 7(3)

Section 7(2) of the SRC Act is applied in disease cases where the incidence of that disease among persons who have engaged in such employment, is significantly greater than the incidence of the disease among persons who have engaged in other employment, in the place where the employee is ordinarily employed.

**Note:** section 7(3) applies the same factors as section 7(2) but relates to an **aggravation** of a disease.

Section 7(2) of the Act requires three criteria to be met:

1. the disease suffered by the employee became symptomatic at any time after the employee was engaged in employment by the Commonwealth.
2. there is a significantly greater incidence of that disease among persons engaged in that employment than among persons engaged in other employment in the place where the employee is ordinarily employed, and
3. Comcare is unable to establish that the employment did not significantly contribute to the disease.

Section 7(2) does not require a proven nexus between the contraction of a disease and an identifiable contributing factor from the employment. Unless the contrary can be established, a disease will be presumed compensable if the incidence of that disease in people engaged in one kind of employment is significantly greater, when compared with the incidence of that same disease in people engaged in some other kind of employment at the same place.

Criteria 2) will likely require specific evidence such as an epidemiology study conducted by an Epidemiologist. Epidemiology is the study and analysis of the incidence of disease in different groups of people.

**Note:** section 7(2) is not clear on what the comparison actually is in terms of '*... persons who have engaged in other employment in the place where the employee is ordinarily employed*'. Previous cases have taken this to mean a comparison between employees of a particular workplace (undertaking any kind of work) and the general community, and other cases have taken this to mean a comparison of a specific cohort of employees (undertaking the same work) and the general community where they work.

**Important:** There have not been many cases where section 7(2) of the SRC Act has been applied. If several claims are received from a group of employees who are employed in the same workplace further advice must be sought.

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## Deeming date of injury – Section 7(4)

Section 7(4) of the SRC Act provides an employee shall be taken to have sustained an injury, being a disease or an aggravation of a disease as the date in whichever of the following first occurs:

- the employee first sought medical treatment for the disease, or aggravation (**Note:** For Noise Induced Hearing Loss (NIHL) claims this may be the date of the first hearing assessment or the date the employee first consulted a doctor), or
- the disease resulted in the death of the employee, or
- the disease first resulted in incapacity for work, or
- the disease first resulted in impairment to the employee.

**Note:** Section 4(1) defines 'impairment' to *mean 'the loss, the loss of the use, or the damage or malfunction, of any part of the body or of any bodily system or function or part of such system or function'*.

Medical evidence can be obtained to assist in seeking an opinion about when an employee was first impaired due to their noise induced hearing loss.

While the date an employee first sought medical treatment is usually the first documented evidence available to support deeming the date of injury under section 7(4), there may be circumstances where an employee is impaired or incapacitated before they first seek medical treatment.

An example of a circumstance where an employee is incapacitated before they seek medical treatment is presented below:

- an employee lodges a claim for a psychological condition on 1 October 2020, with evidence indicating they first sought medical treatment for the condition on 1 September 2020
- the Claims Manager (CM) deems the date of injury based on the date the employee first sought medical treatment
- on further discussion with the employee, the CM establishes the employee took annual leave for the period from 1 August 2020 to 21 August 2020 following the workplace incident
- the employee's treating practitioner confirms the time off work was because of the accepted condition.

In this case, we would deem the date of injury as 1 August 2020 being the date the accepted condition caused an incapacity for work, as it was earlier than date the employee first sought medical treatment.

## Hearing loss claims

The Federal Court has confirmed that the date of last exposure to noise cannot be used as the date of injury for hearing loss claims. Section 7(4) must be applied to hearing loss claims in the same way as it is for other disease claims (*Comcare v Kemp [2020] FCA 86*).

An example of how this is applied is detailed below:

- an individual was employed by the Commonwealth as a construction worker. They ceased their employment with the Commonwealth in the mid-1980s. Years later, the ex-employee lodges a claim for NIHL attributed to their employment as a construction worker where they were exposed to high levels of noise
- the claim form is accompanied by an audiogram test conducted on 21 December 2013
- Employment records obtained from the employer confirm that the employee was employed from August 1985 to January 1987.

Based on the evidence provided, the DOI would be deemed to be the date the employee first sought medical treatment (i.e. the date the audiogram test was conducted) 21 December 2013.

**Note:** While the DOI for this example is 21 December 2013, the CM must record in Pracsys that the exposure occurred prior to 1 December 1988. The purpose of this is to allow liability for these claims to be correctly allocated against the Consolidated Revenue Fund rather than Comcare's premiums funds.

## Information that can assist with deeming a DOI

Information that can assist with deeming a DOI can include, but is not limited to:

- letters from treating doctors
- medical certificates, medical reports, hearing assessments, clinical notes
- diagnostic imaging reports
- employment records confirming when the employee was employed, duration of employment, duties performed, pre employment medicals and physical/psychiatric assessments undertaken in respect of their employment
- changes in employment: hours or days worked, change in role or duties, change in employment type (full time to part time) reporting lines

- information about whether the employee is or was employed elsewhere and the nature of these duties or the conditions of employment;
- incident reports
- leave records – is there a noticeable change in the amount or time of leave being taken?

**Note:** If you have questions concerning a DOI, you should discuss the claim with their Assistant Director.

## Long latency diseases (exposure prior to 1 December 1988)

Long latency disease claims involving conditions such as hearing loss, skin cancers and mesothelioma where there is exposure to an event or process before 1 December 1988 are funded from a Consolidated Revenue Fund (CRF) appropriation, not premiums (see section 90B(ab) SRC Act).

On 7 December 2011 the SRCOLA Act (*Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2011*) provided a number of amendments to the SRC Act which included arrangements for the funding of compensation for long-latency disease claims. Before commencement of these amendments, Comcare was required to collect premiums to fund liabilities for long-latency disease claims based on the deemed date of injury (DOI) where the DOI was 1 December 1988 or later (this excluded the off-budget agencies who are listed in section 128A(4)) of the SRC Act). This resulted in Comcare having to fund liability for long latency disease claims which were recently diagnosed, even though the 'cause' of these diseases occurred prior to the commencement of the SRC Act.

## Recording exposure prior to 1 December 1988

Pracsys allows us to record the instances where exposure occurred prior to 1 December 1988. The purpose of this is to allow liability for these claims to be correctly allocated against the CRF rather than Comcare's premiums funds.

The table below outlines who is responsible for recording information in the NDS/TP/Journey' tab in Pracsys for long latency disease claims:

Stage	Who	Description
Claim Registration	Claim Registration Officer	<ul style="list-style-type: none"> <li>• Ticks the box 'Pre 01-Dec-1988 Exposure' date field.</li> </ul>
Determination of Initial Liability	Claims Manager	<ul style="list-style-type: none"> <li>• Amends the date of injury (DOI) field once it has been deemed in the determination.</li> <li>• Enters the exposure date in the 'Pre 01-Dec-1988 Exposure' date field.</li> </ul> <p><b>Note:</b> If the date of first exposure cannot be identified but it can be ascertained:</p> <ul style="list-style-type: none"> <li>• that the employee was employed by the Commonwealth, and</li> <li>• would have suffered exposure prior to 1 December 1988</li> </ul> <p>then the date taken to be the date of exposure will be 30 November 1988.</p>
Quality Assurance	Assistant Director, Operations	<ul style="list-style-type: none"> <li>• Conducts Quality Assurance on the initial liability determination and the below in Pracsys:               <ul style="list-style-type: none"> <li>◦ exposure date entered in the 'Pre 01-Dec-1988 Exposure date' field, and</li> <li>◦ deemed DOI.</li> </ul> </li> </ul>

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# Firefighters

You may receive a new workers compensation claim from a firefighter claiming for a cancer that has been caused as a result of their employment.

It is important that you are familiar with the disease provisions in the SRC Act (see section 7(8) and 7(9) of the SRC Act) and Part 27 of the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 (the 2022 Amendment Bill).

The SRC Act, along with the 2022 Amendment Bill state that for the firefighter disease provisions to apply, the employee must:

- suffer from a prescribed cancer, and
- have been employed as a firefighter (taken to be where firefighting or related duties made up a “not insubstantial portion of their duties”), and
- the accumulative employment was for the prescribed qualifying period before the cancer was sustained, and
- have been exposed to the hazards of a fire anytime during the qualifying period, and
- employed as a firefighter by the Commonwealth or a Commonwealth authority

If each of these requirements is satisfied, then the employment is taken to have contributed to a significant degree to the contraction of the cancer, unless the contrary is established.

If an employee does not satisfy the matters set out under these sections, then you must assess the claim under the other liability provisions provided by the SRC Act and consider any applicable exclusionary provisions.

## Date of application

*Cancers are treated as diseases and section 7(4) of the SRC Act is applied to deem the Date of injury (DOI).*

The reduction of the qualifying period for oesophageal cancer has retrospective application from 4 July 2011. The amendment relating to ‘not insubstantial portion of duties’ applies from 07 December 2022.



*Current and retired firefighters whose qualifying period of service occurred or started before the relevant date of application are covered.*

*If the DOI is before the relevant date of application, the claim should be assessed against the other SRC Act disease provisions.*

## **Evidence to request from an employer**

*You can request an employer to provide a statement addressing:*

- *that the employee was employed as a firefighter by the Commonwealth or a Commonwealth authority*
- *the duties undertaken by the employee where firefighting and related duties made up a not-insubstantial portion of the employee's duties, and*
- *whether the employee was exposed to the hazards of fires during the qualifying period*

## **Prescribed cancers**

A firefighter must be diagnosed with one of the prescribed cancers for their employment to be taken to have been the significant cause of the cancer.

Secondary cancers which present at the specified sites will not be covered automatically, even if the cancer becomes present in one of the sites in the prescribed list. A secondary cancer occurs where the cancer has originated in and spread from another part of the body. A secondary cancer, if claimed, may need to be assessed as a separate claim.

Where a firefighter claims an aggravation of cancer/s already suffered, speak with your AD to clarify if an individual's acceleration or recurrence of a cancer, is covered by the provisions or not.

Other types of cancer may be prescribed by regulations at a later date.

## **Qualifying periods**

A person must have been employed for the prescribed qualifying period for that cancer before they are first diagnosed with the prescribed disease.

Section 7(9) allows firefighters to add up cumulative periods of service to satisfy the qualifying period. Those employed for two or more separate periods that add up to the qualifying period are taken to have been employed for the qualifying period.

## Table of prescribed cancers and the qualifying employment period

The table below sets out the cancers prescribed by the SRC Act, and the 2022 Amendment Bill and lists the qualifying periods for each type of cancer listed.

Item	Disease	Qualifying period
1	Brain cancer	5 years
2	Bladder cancer	15 years
3	Kidney cancer	15 years
4	Non-Hodgkin's lymphoma	15 years
5	Leukaemia	5 years
6	Breast cancer	10 years
7	Testicular cancer	10 years
8	Multiple myeloma	15 years
9	Primary site prostate cancer	15 years
10	Primary site ureter cancer	15 years
11	Primary site colorectal	15 years
12	Primary site oesophageal cancer	15 years
13	A cancer of a kind	The period

	prescribed for this table	prescribed for such a cancer
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The Safety, Rehabilitation and Compensation Amendment (Prescribed Cancers) Regulations 2022 have expanded the list of prescribed cancers under subsection 7(8) of the Safety, Rehabilitation and Compensation Act 1988 (SRC Act) with effect from 17 December 2022.

The eight new prescribed cancers and qualifying periods include:

Item	Disease	Qualifying period
1	Malignant mesothelioma	15 years
2	Primary site lung cancer	15 years
3	Primary site skin cancer	15 years
4	Primary site cervical cancer	10 years
5	Primary site ovarian cancer	10 years
6	Primary site penile cancer	15 years
7	Primary site pancreatic cancer	10 years
8	Primary site thyroid cancer	10 years

You should also familiarise themselves with diseases covered under the SRC Act ([Specified Diseases and Employment Instrument 2017](#)):

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## Process for assessing a firefighter's claim

The following process details how to assess an employee's claim under the firefighter disease provisions.

1. Has the person been employed as a firefighter by the Commonwealth or a Commonwealth authority where firefighting or related duties made up a not insubstantial portion of their duties?
  - if yes, continue
  - If no, you should discuss the claim with the Assistant Director.
  
2. Was the employee employed for a cumulative period/s as a firefighter for the prescribed qualifying period for that cancer before they were first diagnosed with the prescribed cancer?
  - if yes, continue
  - if no, proceed to assess liability under the other liability provisions provided the SRC Act.
  
3. Was the employee exposed to the hazards of a fire during the qualifying period?
  - if yes, continue
  - if no, proceed to assess liability under the other liability provisions provided the SRC Act.
  
4. Review the medical evidence. Is there medical evidence that:
  - assists with deeming the date of injury
    - If the DOI is before 4 July 2011 the claim falls outside the scope of sections 7(8), (9) and (10), and

- indicates there are any other factors that may have contributed to the development of the cancer, other than the employee's role as a firefighter?
  - if yes, you should request the legally qualified medical practitioner (LQMP) to provide this information
  - if no, continue
- confirms the employee suffers from a cancer or a cancer of a kind prescribed in section 7(8) of the SRC Act (include amendments to the SRC Act through the 2022 Amendment Bill)?
  - if yes, continue
  - if no, proceed to assess liability under the other liability provisions provided the SRC Act.

**5. Evidence of other contributing factors. Has the medical evidence or the employer provided evidence to prove that the employee's employment did not contribute to the contraction (or aggravation) of the cancer?**

- if yes, discuss the claim with the Assistant Director
- if no, proceed.

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## Presumptive provisions for first responders

You may receive a new workers' compensation claim from a first responder claiming for post-traumatic stress disorder (PTSD) which has been caused as a result of their employment.

It is important that you are familiar with the presumptive liability provisions for diseases in the SRC Act (see section 7(11), (13) and (14) of the SRC Act) and [Schedule 3](#) (pages 305-306) of the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* (the 2023 Amendment Bill).

These provisions provide a simplified and streamlined access to workers compensation for first responders who suffer or are suffering from PTSD.

The changes reverse the onus of proof from first responders to employers. This allows affected employees easier and more timely access to necessary assistance and compensation.

Reversing the burden of proof from first responders to employers does not introduce new entitlements to compensation payments made under the SRC Act. Instead, it provides timely access to compensation, while still providing employers with the opportunity for evidence-based rebuttal ([establishing the contrary](#)).

## Threshold tests

Section 7(11) introduces presumptive compensation for first responders who suffer or are suffering from PTSD, without having to prove that their PTSD is work-related.

For the presumption to apply, the following requirements must be met:

- the employee contracted PTSD on or after 15 December 2023 (this is the date the presumptive liability for PTSD came into effect), and
- the employee has suffered or is suffering from PTSD, and
- before the symptoms of PTSD became apparent, the employee was employed as a first responder.

If each of these requirements is satisfied, then the employee's employment as a first responder is taken to have contributed to a significant degree to the contraction of the PTSD, unless the contrary is established. These requirements are outlined in the sections below.

Presumptive liability can come into effect at any time during a liability assessment for a claim.

For example, a claim for different psychological conditions or a claim for multiple conditions including PTSD may be submitted.

During the assessment, medical evidence is provided that supports a PTSD diagnosis in line with the Diagnostic and Statistical Manual of Mental Disorders – fifth edition text revision (DSM-5-TR).

If the other criteria for presumptive liability are met, presumptive liability for the PTSD condition applies and can be accepted. The Claims Manager can then continue to assess liability for any other psychological conditions related to the claim in accordance with the other liability provisions under the SRC Act.

## Suffered or suffering from post-traumatic stress disorder

Section 7(11) provides that a presumptive claim for PTSD:

- **must** have a diagnosis from a legally qualified medical practitioner (LQMP) (e.g. GP or psychiatrist) or a psychologist
- the diagnosis **must** be assessed in accordance with the Diagnostic and Statistical Manual of Mental Disorders – fifth edition text revision (DSM-5-TR)

If these considerations are not met, then you must assess the claim under the other liability provisions provided by the SRC Act and consider any applicable exclusionary provisions.

To support employees, you should provide them with the following information which they can take to their treating practitioner:

- The LQMP must ensure that they clearly state in their evidence that the DSM-5-TR was used to diagnose the PTSD.
- This must include addressing the criteria in the DSM-5-TR individually, rather than a simple statement that the DSM-5-TR was applied.

## Employed as a first responder

For the presumption legislation to apply, the employee must have been employed as a first responder before the PTSD was contracted.

Section 7(13) defines first responders as:

**Australian Federal Police (AFP) employees, within the meaning of the *Australian Federal Police Act 1979*.**

This includes the following AFP employees:

- the Commissioner of the Australian Federal Police
- the Deputy Commissioner of the Australian Federal Police
- persons engaged by the Commissioner of the Australian Federal Police as an employee.

## **Australian Border Force employees**

This includes the following ABF employees:

- the Australian Border Force Commissioner
- an Australian Public Service (APS) employee in the Australian Border Force.

## **Commonwealth and ACT Government employees, employed as:**

- firefighters
- ambulance officers or paramedics
- emergency services communications operators.

## **Members of an emergency service, within the meaning of the *Emergencies Act 2004* (ACT).**

This includes ACT Government employees and volunteers:

- involved in response operations for storms and floods
- involved in assistance operations relating to emergencies and searches.

## **Responders as declared by the Minister by legislative instrument including:**

- any member of a class of employees classified as a 'responder'
- classes of employees to whom the presumptive legislation applies.

You will need to rely on information from the employer to determine whether the employee was or is employed as a first responder.

### **Example:**

The employee is employed as a first responder and according to medical evidence contracted PTSD on 6 November 2023, which is prior to the commencement of the presumptive provisions.

In this instance, the claim will need to be assessed under the normal provisions of the SRC Act including any applicable exclusionary provisions.



## Establishing the contrary (rebuttal)

The presumptive provisions mean that the first responder's employment is taken to have contributed, to a significant degree, to the PTSD condition. This is presumed, **unless the contrary is established**.

The standard of proof which applies in determining whether the contrary has been established is the balance of probabilities (more probable than not).

To establish the contrary, you need to have the relevant evidence or information available. This is usually provided by the employer or treating medical practitioner. The information or evidence needs to contradict or nullify the requirements of the presumptive provisions.

### Example:

A claim is made by a first responder suffering from PTSD. The employer confirms that the employee is employed as a first responder, before the onset of the PTSD.

The employer advises that they are aware the employee was exposed to a traumatic event in their private life and that the event may be the cause of the PTSD.

Further medical evidence is sought from the treating practitioner which establishes that the likely cause of the PTSD is the non-work-related traumatic event, and that the employment as a first responder had no significant contribution to the PTSD. Therefore, the contrary has been established.

The employee's employment as a first responder will not be taken to have contributed, to a significant degree, to the contraction of the PTSD.

## Other avenues of compensation

If the presumptive provisions do not apply, the claim will need to be assessed under the normal provisions of the SRC Act. Refer to section 5B of the SRC Act.

## Reconsiderations

Where a claim for PTSD has been accepted under the presumptive provisions, employers are still entitled to request a reconsideration to establish the contrary (rebuttal) of the claim.

## Exclusionary provisions

Even if the presumptive provisions apply to the employee's claim for PTSD, you will still need to take the considerations under the [exclusionary provisions](#) of the SRC Act into account when determining the claim.

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## Process for assessing a first responder's PTSD claim

The following process details how to assess an employee's PTSD claim under the presumptive provisions for first responders.

### 1. Is the employee a first responder?

Is the person employed as a first responder under the definition in section 7(13)?

- If yes, continue assessing the claim under the presumptive provisions
- If no, assess the claim under the normal provisions of the SRC Act

### 2. Has the employee suffered or is suffering from PTSD?

- If yes, continue
- If no, assess the claim under the normal provisions of the SRC Act

### 3. Medical diagnosis

If the employee has suffered or is suffering from PTSD, has a medical diagnosis of PTSD been made by a Legally Qualified Medical Practitioner or psychologist in accordance with the DSM-5-TR PTSD diagnostic criteria?

- If yes, continue
- If no, you should follow up with the LQMP and if the diagnosis cannot be determined in accordance with the DSM-5-TR, continue to assess liability under section 5B (presumptive liability does not apply).

#### 4. Date the employee contracted PTSD

Was the date the employee first contracted PTSD on or after 15 December 2023?

- If yes, continue
- In no, assess the claim under the normal provisions of the SRC Act

#### 5. Was the employee employed as a first responder prior to the date of injury?

- If yes, continue
- If no, you should discuss the claim with your Assistant Director

#### 6. Evidence of other contributing factors

Is there medical or employer-provided evidence to prove that the employee's employment did not contribute to the contraction of the PTSD?

- If yes, discuss the claim with your Assistant Director
- If no, continue

#### 7. Exclusionary provisions

Do any of the considerations under the exclusionary provisions of the SRC Act apply?

- If yes, discuss the claim with your Assistant Director
- If no, you can accept liability and continue with the liability determination process. [See iClaim](#) and [Decision making under the SRC Act](#).

## Procedure on how to identify the employee as a first responder

If the employee has been identified as a first responder:

- open the '*Amend Claim Registration*' (ACLM) function in Pracsys
- search for the correct claim
- click on '*Next*' and '*Next*' again until you reach the '*Amend Claim Registration - Amend Step*' screen
- select the '*Agency*' tab
- check the '*Employee is first responder*' tick box at the bottom of the list
- click '*Amend*'

Refer to: [How to apply the presumptive liability flags](#)

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## Procedure on how to apply the secondary section of the Act

This procedure is to be undertaken by the Claims Manager.

If the employee is a first responder:

- open the '*Amend Claim Determination*' (ADET)
- select the relevant claim
- click on the binoculars next to the '*Secondary Section of Act*' data fields
- select the correct section of the Act from the '*Sections of the Act list*'
- click on '*OK*'
- click on '*Amend*' to save the information

Refer to: [How to apply the presumptive liability flags](#)

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