

## Workers Compensation and Injury Management Act 2023

### Implementation proposals for regulations and administrative instruments

## Implementation Consultation Paper 2: Presumptive Diseases

### October 2023

Public comment on the implementation proposals  
should be submitted to:

[consultation@workcover.wa.gov.au](mailto:consultation@workcover.wa.gov.au) by **1 December 2023**

All submissions will be publicly accessible unless confidentiality is requested.

For further details on making a submission see:

<https://www.workcover.wa.gov.au/resources/modernising-was-workers-compensation-laws/>

**\*\*\*Draft proposals only\*\*\***

The proposals in this consultation paper are in draft form to facilitate public comment and do not represent the final position of WorkCover WA, the Minister or Government.

# Implementation Consultation – Presumptive Diseases

## Scope

This document outlines the proposed list of presumptive diseases to be in regulations under the *Workers Compensation and Injury Management Act 2023 (WCIMA23)*.

## Background and intent

A rebuttable presumption of work-related injury facilitates access to the workers compensation scheme by reversing the onus of proof about the cause of the injury.

A legislative presumption of work-related injury or disease should only be considered in limited circumstances. A key consideration is that there is sufficient scientific evidence that working in particular types of employment has a heightened risk of causing specific injuries or diseases.

The *WCIMA23* discontinues the list of deemed diseases in Schedule 3 of the 1981 Act and provides for all presumptive diseases to be listed in regulations.

Addressing presumptive diseases through regulations is necessary to ensure the list of presumptive diseases remains current and so that in the future new occupational diseases and classes of employment can be accommodated quickly if the circumstances justify it. The COVID-19 pandemic illustrated this need clearly as it required amendments to the 1981 Act in 2020 to authorise regulations to make COVID-19 a presumptive work-related disease for health care workers.

Presumptive diseases are dealt with in regulations or other subsidiary instruments in most other jurisdictions.

It is intended the proposed list of presumptive diseases to be in regulations under the *WCIMA23* will be closely based on Safe Work Australia's [Revised list of Deemed Diseases in Australia](#) with some modifications where appropriate to suit the requirements of the WA scheme.

## WCIMA23 key provisions

Section 10 provides for regulations to be made which establish a presumption of injury from employment for prescribed diseases contracted by workers in prescribed employment. Section 11 provides for presumptive firefighter cancers and corresponding qualifying periods to be prescribed in regulations (additional to the 12 specified cancers in the *WCIMA23*).

## Regulations

It is intended a table be inserted into the regulations to list prescribed diseases, prescribed employment and, where relevant, prescribed employment periods and conditions on the operation of the presumption for specified diseases (see [Attachment 1 - Table of prescribed diseases and prescribed employment](#)).

With the exception of PTSD and COVID-19 (addressed below), it is intended regulations for prescribed diseases and prescribed employment will only apply to diseases diagnosed after commencement of the *WCIMA23* by a suitably qualified medical practitioner (or where the worker dies, on the day the worker dies).

#### Coverage of Schedule 3 diseases under 1981 Act

Schedule 3 of the 1981 Act sets out a list of ‘specified industrial diseases’ and associated process descriptions for which there is a presumption of work-related injury. The Schedule 3 list comes from a list of occupational diseases published in 1934 and is not replicated in the *WCIMA23*.

The proposed table of prescribed diseases at Attachment 1 covers and expands upon the list of deemed diseases in Schedule 3 of the 1981 Act but in some cases describes the disease or prescribed employment relating to the disease differently.

Any differences in terminology between the list in schedule 3 of the 1981 Act and Safe Work Australia’s *Revised list of Deemed Diseases in Australia* reflect the changes in working arrangements and in the epidemiological evidence since the Schedule 3 list was adopted and the *Deemed Diseases in Australia* report was published.

#### Scientific basis for Safe Work Australia’s list of deemed diseases

Safe Work Australia’s 2021 *Revised list of Deemed Diseases in Australia* report includes a recommended list of diseases and corresponding occupations for use by states and territories when considering presumptive provisions and is based on the findings of the [Review of the 2015 Deemed Diseases In Australia](#) report.

It is the most recent and comprehensive scientific analysis linking specific diseases to specific occupational exposure(s).

The 2021 report is based on epidemiological standards about the sufficiency of the scientific evidence linking disease with occupational exposure, and contains the criteria, methodology, issues and evidence used to determine the recommended list of diseases.

#### Modifications to Safe Work Australia’s list of deemed diseases

Whilst it is intended regulations will be closely based on Safe Work Australia’s 2021 *Revised list of Deemed Diseases in Australia*, some modifications and exclusions are proposed.

#### Qualifying periods for specified diseases

If a worker contracts a prescribed disease they must have been working in the specified kind of employment (prescribed employment) at the time, or at any time before, contracting the disease.

Most of the items in the proposed table require a minimum period of employment. To satisfy this requirement:

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

The employment qualifying periods in the proposed table are taken from those adopted in the Commonwealth's Comcare scheme on the basis of a [Comcare report](#), produced by Dr Tim Driscoll a leading epidemiologist, which sets out the recommended duration of exposure and latency for certain diseases.

#### *Modifications to operation of PTSD and COVID-19 presumptions*

There is intended there be provisions that clarify the application of the presumption with respect to COVID-19 and PTSD in line with current eligibility criteria determined by Government.

The same conditions and requirements for COVID-19 as in the regulations under the 1981 Act will apply. That is, a diagnosis of COVID-19 from PCR testing, in specified health care workers, suffered on or after 16 February 2020.

The same conditions and requirements for PTSD as in the regulations under the 1981 Act are also intended to apply. That is, a diagnosis of PTSD made by a psychiatrist in accordance with DSM-5 for an injury suffered on or after 1 February 2022, for ambulance workers and certain ambulance communication officers, or suffered after 6 May 2023, for firefighters and certain DFES communication system officers.

#### *Exclusions for diseases covered in Act*

The *WCIMA23* continues to provide for a legislative presumption of work-related injury for dust disease and noise induced hearing loss. As such, noise induced hearing loss and asbestos and silica related diseases that are in Safe Work Australia's 2021 *Revised list of Deemed Diseases in Australia* will not be in the proposed table in regulations under the *WCIMA23*.

#### *Firefighter cancers*

The *WCIMA23* provides for a rebuttable presumption that 12 specified cancers, with corresponding qualifying periods, are work related when suffered by firefighters.

The *WCIMA23* provides for additional presumptive cancers and corresponding qualifying periods to be prescribed in regulations (not included in the proposed table of general deemed diseases).

It is intended regulations under the *WCIMA23* will prescribe the following additional presumptive cancers and qualifying periods, consistent with regulations under the 1981 Act:

Cancer	Qualifying period
Malignant mesothelioma	15 years
Primary site cervical cancer	10 years
Primary site lung cancer	15 years
Primary site ovarian cancer	10 years
Primary site pancreatic cancer	10 years
Primary site penile cancer	15 years
Primary site skin cancer	15 years
Primary site thyroid cancer	10 years

To provide for a seamless transition to the *WCIMA23* from the 1981 Act and regulations, a firefighter will be able to rely on the presumption for any one of the eight additional cancers as long as the cancer was diagnosed on or after 13 November 2013 (the date the presumptive firefighter cancer legislation came into operation under the 1981 Act) and a claim is made after 9 August 2023 for the 8 cancers (the date the 8 additional cancers were specified in regulations under the 1981 Act).

## WorkCover WA expectations

It is not the intent of the *WCIMA23* and proposed regulations that insurers disregard section 10 of the *WCIMA23* and delay a claim decision to independently seek evidence as to the cause of any of the presumptive diseases in regulations. This undermines the intent of having presumptive diseases in legislation.

In order to rebut the presumption an insurer or self-insurer must prove the disease was not contracted from employment. The reversal of the standard of proof therefore requires the insurer or self-insurer to have compelling medical or scientific evidence to rebut the presumption that is capable of satisfying an arbitrator if the matter is disputed.

## Attachments

1. Table of prescribed (presumptive) diseases and prescribed employment

## Attachment 1: Table of prescribed diseases and prescribed employment

### Part 1: Infectious disease

<b>Disease</b>	<b>Prescribed employment</b>
1. Anthrax	Employment involving work with animals or animal carcasses (such as animal handler, pelt handler, abattoir worker, meat inspector).
2. Avian Influenza	Employment involving work with birds (such as poultry slaughterer, poultry farm worker, pet shop worker, veterinarian, veterinary nurse) or frontline healthcare occupations with direct patient contact (such as nurse, doctor, physiotherapist).
3. Brucellosis	Employment involving work with animals or animal carcasses (such as veterinarian, farmer or farm worker, abattoir worker, laboratory worker).
4. COVID-19	Employment as a frontline healthcare worker as defined and with the conditions set out in regulations.
5. Hepatitis A	Employment involving contact with human waste (such as child care workers, carers of intellectually disabled persons, workers in rural or remote indigenous communities, and sewage workers and plumbers).
6. Hepatitis B and C	Employment involving contact with human bodily secretions (such as health care worker, embalmer, person who handles body substances, clinical laboratory staff, worker in long-term correctional facilities, police, member of the armed forces, emergency services worker).
7. HIV/AIDS	Health care workers and laboratory workers who become HIV positive after a needlestick injury.
8. Influenza A (H1N1)	Frontline healthcare employment with direct patient contact (such as nurse, doctor, physiotherapist).
9. Leptospirosis	Employment involving work with animals or animal carcasses (such as farmer or farm worker, abattoir worker, forestry worker, hunter, veterinarian, livestock transport operator) or work with animal or human waste (such as plumber).
10. Middle East Respiratory Syndrome	Frontline healthcare employment with direct patient contact (such as nurse, doctor, physiotherapist).

11. Orf  
Employment involving work with sheep or sheep carcasses (such as sheep farmer or farm worker, goat farmer or farm worker, abattoir worker, meat inspector).
12. Psittacosis  
Employment involving work with birds (such as poultry slaughterer, poultry farm worker, pet shop worker, veterinarian, veterinary nurse).
13. Q-fever  
Employment involving contact with animals or animal parts in a rural setting (such as abattoir workers, stock workers, stock transporters, shearers, hide processors, farmers and veterinarians).
14. Tuberculosis  
Employment involving contact with persons or animals in situations where tuberculosis prevalence is likely to be significantly higher than the general community (such as health worker, clinical laboratory worker, funeral parlour staff, farmer, veterinarian), or person with silicosis.

## Part 2: Malignancy

Disease	Prescribed employment
15. Primary malignant disease of the salivary gland	Employment for at least 5 years (whether consecutive or not) involving exposure to ionizing radiation
16. Primary malignant disease of the nasopharynx	Employment for at least 5 years (whether consecutive or not) involving exposure to formaldehyde, wood dust
17. Primary malignant disease of the oesophagus	Employment for at least 5 years (whether consecutive or not) involving exposure to ionizing radiation
18. Primary malignant disease of the stomach	Employment for at least 5 years (whether consecutive or not) involving exposure to ionizing radiation
19. Primary malignant disease of the colon or rectum	Employment for at least 5 years (whether consecutive or not) involving exposure to ionizing radiation
20. Primary malignant disease of the liver	Exposure to HBV or HCV related to employment specified in item 6. Employment for at least 5 years (whether consecutive or not) involving exposure to vinyl chloride monomer
21. Primary malignant disease of the bile duct	Employment for at least 5 years (whether consecutive or not) involving exposure to 1,2-Dichloropropane
22. Primary malignant disease of the nasal cavity or para-nasal sinuses	Employment for at least 5 years (whether consecutive or not) involving exposure to ionizing radiation, leather dust, nickel, wood dust
23. Primary malignant disease of the larynx	Employment for at least 5 years (whether consecutive or not) involving exposure to acid mist - strong inorganic, asbestos*

24. Primary malignant disease of the lung	Employment for at least 5 years (whether consecutive or not) involving exposure to arsenic, beryllium, bis(chloromethyl)ether, cadmium, chromium VI, diesel engine exhaust, ETS, ionizing radiation, nickel, PAHs**, Radon-222 and its decay products, Soot (chimney sweeping), welding fumes
25. Primary malignant disease of the bone	Employment for at least 5 years (whether consecutive or not) involving exposure to ionizing radiation
26. Primary malignant disease of the skin (melanoma)	Employment for at least 5 years (whether consecutive or not) involving exposure to solar radiation, polychlorinated biphenyls
27. Primary malignant disease of the skin (non-melanoma)	Employment for at least 5 years (whether consecutive or not) involving exposure to ionizing radiation, polycyclic aromatic hydrocarbons#, solar radiation
28. Primary malignant disease of the breast (female)	Employment for at least 5 years (whether consecutive or not) involving exposure to ionizing radiation
29. Primary malignant disease of the ovary	Employment for at least 5 years (whether consecutive or not) involving exposure to asbestos
30. Primary malignant disease of the kidney	Employment for at least 5 years (whether consecutive or not) involving exposure to ionizing radiation, trichloroethylene
31. Primary malignant disease of the bladder	Employment for at least 5 years (whether consecutive or not) involving exposure to 2-naphthylamine, benzidine, cyclophosphamide, ionizing radiation, ortho-toluidine, polycyclic aromatic hydrocarbons^
32. Primary malignant disease of the eye (melanoma)	Employment for at least 5 years (whether consecutive or not) involving exposure to ultraviolet light from welding
33. Primary malignant disease of the brain	Employment for at least 5 years (whether consecutive or not) involving exposure to ionizing radiation
34. Primary malignant disease of the thyroid	Employment for at least 5 years (whether consecutive or not) involving exposure to ionizing radiation
35. Primary Leukaemia+	Employment for at least 2 years (whether consecutive or not) involving exposure to benzene, butadiene, cyclophosphamide, formaldehyde, HCV exposure related to occupation, ionizing radiation
36. Primary Non-Hodgkin's Lymphoma	Employment for at least 2 years (whether consecutive or not) involving exposure to ionizing radiation, lindane, pentachlorophenol

\*: Covers all forms of asbestos, including actinolite, amosite, anthophyllite, chrysotile, crocidolite, tremolite). Includes mineral substances that contain asbestos.

\*\* : Includes exposure from coal gasification, coal tar pitch and coke production



#: Includes topical exposure from coal tar distillation, coal tar pitch, mineral oils (untreated or mildly treated), shale oils, soot (chimney sweeping)

^: Exposure during aluminium production

+: Excluding chronic lymphatic leukaemia

### Part 3: Mental or neuropsychiatric diseases

Disease	Prescribed employment
37. Post-traumatic stress disorder	Employment in a first responder class of employment as defined and with the conditions set out in regulations.

### Part 4: Diseases of the nervous system

Disease	Prescribed employment
38. Peripheral neuropathy	Employment for at least one year (whether consecutive or not) involving exposure to metals such as lead, mercury and arsenic; organic solvents such as n-hexane, carbon disulphide and trichloroethylene; pesticides such as organophosphates; acrylamide.

### Part 5: Respiratory diseases

Disease	Prescribed employment
39. Occupational asthma*	Employment for at least 4 weeks (whether consecutive or not) involving exposure to sensitising agents or irritants - arthropods or mites, biological enzymes, bioaerosols, derived from fish/shellfish, derived from animals, flour, sensitising foods, flowers, latex, wood dusts, soldering, reactive dyes, anhydrides, acrylates, epoxy, ethylene oxide, aldehydes, pesticides, amines, ammonia, industrial cleaning agents, acids, isocyanates, other reactive chemicals, sensitising metals, sensitising drugs.*
40. Byssinosis	Employment for at least 4 weeks (whether consecutive or not) involving exposure to cotton, flax, hemp, sisal dust
41. Extrinsic allergic alveolitis	Employment for at least 4 weeks (whether consecutive or not) involving exposure to damp material of biological origin, such as mouldy hay, straw, grain and feathers
42. Obliterative bronchiolitis	Employment for at least 4 weeks (whether consecutive or not) involving exposure to food flavourings thought to be associated with obliterative bronchiolitis).

\*: This includes immunologically-mediated occupational asthma and new cases of occupational asthma arising as result of workplace exposure to irritants. It excludes pre-existing asthma worsened due to exposure to workplace irritants.

\*: The large number of occupational agents that have been shown to cause these diseases means that it is impractical to list every relevant agent

+: See the entry under Part 9 for a detailed list of specific exposures.

## Part 6: Hepatic diseases

<b>Disease</b>	<b>Prescribed employment</b>
43.Non-infectious hepatitis	Employment for at least 1 year (whether consecutive or not) involving exposure to agents known to cause hepatitis (particularly organic solvents)+
44.Chronic active hepatitis	Persons with known HBV or HCV related to employment for at least 6 months (whether consecutive or not)
45.Hepatic cirrhosis	Persons with known HBV or HCV related to employment

## Part 7: Skin diseases

<b>Disease</b>	<b>Prescribed employment</b>
46.Contact dermatitis (irritant and allergic)	Employment for at least 4 weeks (whether consecutive or not) involving exposure to sensitising agents or irritants.
47.Occupational vitiligo	Employment for at least 4 weeks (whether consecutive or not) involving exposure to para-tertiary-butylphenol; para-tertiary-butylcatechol; para-amylphenol; hydroquinone or the monobenzyl or monobutyl ether of hydroquinone.

## Part 8: Musculoskeletal diseases

<b>Disease</b>	<b>Prescribed employment</b>
48.Raynaud's disease	Employment or at least 12 weeks (whether consecutive or not) involving vibration from powered tools and equipment
49.Bursitis (at the elbow or knee)	Employment for at least 6 months (whether consecutive or not) involving prolonged external friction or pressure or repetitive motion at or about the elbow or the knee
50.Osteonecrosis	Employment involving working at significantly increased or decreased air pressure (such as professional divers, caisson divers, hyperbaric exposure chamber attendants)

## Part 9: Poisoning/ toxicity

Disease	Prescribed employment
51. Acute poisoning / toxicity (includes acute damage to the heart, lungs, liver, kidney, nervous system and blood)	Employment involving exposure to acrylonitrile; alcohols; antimony; arsenic; benzene; beryllium; cadmium; carbon disulphide; chromium; copper; fluorine; alcohol, glycols or ketones; hexane; lead; manganese; mercury; mineral acids; nitroglycerine (or other nitric acid esters); osmium; oxides of nitrogen; ozone; pesticides (organophosphate and organochlorine compounds, herbicides and related compounds; pharmaceutical agents; phosgene; phosphorus; selenium; styrene; thallium; tin; toluene; vanadium; xylene; zinc; chemical asphyxiants (carbon monoxide, hydrogen cyanide, hydrogen sulphide, methylene chloride); irritants (benzoquinone and other corneal irritants); toxic halogen derivatives of aliphatic or aromatic hydrocarbons; toxic nitro- and amino-derivatives of benzene (and other less common, specific substances not included here)*

\*: The large number of occupational agents that have been shown to cause these diseases means that it is impractical to list every relevant agent