

Prescribed (Presumptive) Diseases

The *WCIMA23* provides for regulations to be made which establish a presumption of work-related injury for prescribed diseases contracted by workers in prescribed employment.

Key Points

Act ref: s. 10

- A presumption of work-related injury facilitates access to the workers compensation scheme by reversing the onus of proof about the cause of the injury.
- Regulations will set out the diseases and types of employment for which a presumption of work-related injury applies.
- The regulatory mechanism provides the flexibility to add occupational diseases and classes of employment if the circumstances justify it in the future.
- Section 10 of the *WCIMA23* replaces, but is consistent with, section 49F of the 1981 Act inserted by the *Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020*. The presumption for health care workers who contract COVID-19 will be remade under the new regulations.
- Schedule 3 of the 1981 Act will be repealed with all required presumptive diseases from Schedule 3 included in regulations made under the *WCIMA23*.
- The *WCIMA23* retains standalone provisions for a presumption of work-related injury for workers who contract a dust disease via exposure to asbestos or mineral dust (Part 2 Division 9), and for firefighters who contract certain cancers (s. 11).

Questions & Answers

Q. Why are presumptive diseases to be in regulations and not the Act?

A. The most appropriate method to address presumptive diseases is through regulations. This is to ensure the list of presumptive diseases remains current with the changing nature of work and there is a responsive method to ensure new diseases can be accommodated where there is supporting epidemiological evidence. The COVID-19 pandemic illustrated this point clearly (the 1981 Act was amended in 2020 to insert a regulation making power to include COVID-19 as a presumptive disease for health care workers).

Q. What other diseases are likely to be in regulations?

A. The list of presumptive diseases will be subject to consultation as part of the development of regulations. SafeWork Australia's [Revised List of Deemed Diseases in Australia](#)¹ includes a recommended list of diseases and corresponding occupations for use by states and territories when considering presumptive provisions. Any proposal to make regulations will consider Safe Work Australia's *Revised List of Deemed Diseases in Australia* report.

¹ safeworkaustralia.gov.au