Frequently Asked Questions

Information for employers

Who is considered an ‘employee’ under the SRC Act?

To be an ‘employee’ under the Safety, Rehabilitation and Compensation Act 1988 (SRC Act), a person must be employed by:

- the Commonwealth or by a Commonwealth authority; or
- a licensed corporation (this includes Australian Capital Territory (ACT) Government employees).

If a person is an employee under the SRC Act, the next consideration is whether an injury arose out of, or in the course of, the employee’s employment (section 5A). The consideration for disease claims (including psychological injuries) is whether the ailment was contributed to, to a significant degree, by the employee's employment (section 5B).

These are the first legislative considerations when determining whether a claim is compensable under the SRC Act. Each claim will be determined on a case-by-case basis, having regard to the individual circumstances of the injury/disease.

Are volunteers considered ‘employees’ under the SRC Act?

Unpaid volunteers are not normally considered ‘employees’ under the SRC Act unless they are included as part of a Notice of Declaration under section 5(6) or 5(15) of the SRC Act.

A claim relevant to a Notice of Declaration will need to be assessed in order to determine coverage.

Does the SRC Act apply to an employee who takes leave to support the bushfire emergency?

An injury sustained while an employee is on volunteer leave (as part of the Prime Minister Declaration or existing employment arrangements) is unlikely to be covered under the SRC Act. Generally, an employee on leave undertaking activities away from the workplace will not satisfy the required legislative connection to employment.

However, each claim will be assessed on a case-by-case basis considering a range of factors including (but not limited to): where and how the injury was sustained; the level of employer control; and the level of connection with the duties of employment.

Where a volunteer is not covered under the SRC Act, coverage may exist under another compensation scheme in the relevant State or Territory jurisdiction in which they have volunteered.
Does the SRC Act apply if an employer directs an employee to assist with the bushfire emergency support and recovery efforts?

Employees who are directed by their employer to participate in emergency support and recovery efforts as part of their employment duties are likely to be covered under the SRC Act.

An employee is a reservist and has been called up – does the SRC Act cover them?

Commonwealth and self-insured licensee employees who have been called up to fulfil Australian Defence Force (ADF) Reserve service as part of the bushfire emergency are unlikely to be covered under the SRC Act. For the duration of their service, they are considered to be under the jurisdiction of the ADF for workers’ compensation. An injury sustained while working for the ADF will come under the military compensation scheme and a claim for compensation should be directed to the Department of Veterans’ Affairs (DVA).

Can an employee make a claim for injury resulting from smoke or air quality issues?

An injury resulting from smoke or air quality issues is likely to be considered under the disease provisions of the SRC Act. For a disease to be compensable it must be contributed to, to a significant degree, by the employee’s employment (section 5B).

Claims for diseases sustained from smoke or air quality issues will be assessed on a case-by-case basis. Information provided by the employer and the employee will be important in assisting with the assessment.

What records should employers keep in the event a claim for a disease is made relating to smoke or air quality?

To assist in assessing any claim for workers’ compensation, employers should retain records relating to:

- air quality tests and results
- processes to assist employees manage air quality issues in their workplace, and
- mitigation actions for managing and improving air quality in the workplace and their effectiveness.

How do the deemed diseases provisions apply to claims from smoke or air quality issues?

The SRC Act deems certain diseases to have been contributed, to a significant degree, by employment. For a deemed disease to apply an employee must:

- have contracted a disease that is on the list of specified diseases, and
- be engaged in the minimum employment period before the disease was contracted.

Claims relating to deemed diseases will be assessed on a case-by-case basis against the relevant criteria. Comcare has issued scheme guidance on the deemed diseases provisions.