



SPECIFIED DISEASES AND EMPLOYMENT— SUBSECTION 7(1) OF THE SRC ACT

PURPOSE

To provide scheme guidance to relevant authorities and their claims managers about the *Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Instrument 2017*. This instrument sets out the circumstances in which a disease shall be taken to have been contributed to by employment under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

BACKGROUND

Under subsection 7(1) of the SRC Act the Minister may, by legislative instrument, specify that a certain disease relating to a certain kind of employment, is taken to have contributed, to a significant degree, to the contraction of the disease, unless the contrary is established.

On 3 October 2017 the Minister issued a new legislative instrument declaring a list of specified diseases and employment (deemed diseases list).¹ The new deemed diseases list applies to diseases contracted on or after 1 October 2017.

The previous list of diseases was based on the International Labour Organisation's List of Occupational Diseases 1934. Using the old list, it was difficult to connect the disease and the employment.

The deemed diseases list is based on Safe Work Australia's *Deemed Diseases in Australia August 2015* (deemed disease report).² This report provides a list of diseases with medical and scientific evidence to link the diseases and work-related exposure.

Not all diseases recommended in the deemed diseases report are specified in the SRC Act's deemed diseases list.

GUIDANCE

The assumption established by section 7(1) of the SRC Act operates to streamline access to workers' compensation where there is a high likelihood that certain diseases are work-related. The effect is to assume that the employee has the disease and liability for workers' compensation exits, unless the relevant authority can prove otherwise.

Once it is established that an employee:

- > contracts a disease that is on the list of specified diseases; and
- > was engaged in specified employment for the minimum employment period before the disease was contracted,

the employee needs no additional evidence that their employment significantly contributed to the disease.

¹ The *Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Instrument 2017* is available on the Federal Register of Legislation [website](#).

² The Safe Work Australia Deemed Diseases in Australia report is published on the Safe Work Australia [website](#).

Deemed diseases list

There are 44 specified diseases and employments (items) in the deemed diseases list.

If an employee contracts a specified disease they must have been undertaking the specified kind of employment before the contraction of the disease.

Most of the 44 items in the deemed diseases list require a minimum period of employment. To satisfy this requirement:

- > 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 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 employment where the relevant authority would not be liable to pay compensation under the SRC Act should not be included. The employee need not have worked with that person, thing or agent, or undertaken the activity specified, every working day.

If an employee's employment did not involve the work or work activity that was typical for the specified kind of employment, the employment-related risk may be insufficient even if the employee engaged in the specified kind of employment for the minimum employment period.

Relevant guidance material

The explanatory statement (ES) that accompanies the deemed diseases legislative instrument provides the purpose and effect of subsection 7(1) of the SRC Act. The ES provides guidance about the specified diseases and specified kind of employment for the minimum employment period.

It is expected that decision makers will refer to the ES and the deemed diseases report when applying the deemed diseases list.

The ES and report work together with the deemed diseases list and will assist claims managers consider whether they should investigate the claim further for the purpose of establishing proof that the assumption does not apply.

Deemed diseases report

Chapter 7 (pages 45 to 70) of the deemed disease report provides a short description of the specified diseases and information about the relevant:

- > occupation or industry
- > latency period
- > minimum exposure period
- > any non-employment causes.

Liability pathway

Where a claim is made for the contraction of a disease, claims managers should refer to the deemed diseases list in the first instance. If an item of the deemed diseases list is satisfied (specified disease is contracted by an employee engaged in that kind of employment for the minimum period) the employee's employment is taken to have significantly contributed to the contraction of disease, unless the contrary is established by the relevant authority.

The exclusionary provisions in the SRC Act must also be considered, and if these apply liability for compensation will be excluded.

Where the deemed diseases list does not apply to a claimed disease, it must be assessed against the other SRC Act disease provisions.

Attachment A – Contraction of disease liability flow chart

Date of effect

The deemed diseases list applies to claims with a date of injury on or after 1 October 2017.

MORE INFORMATION

For more information, please contact Comcare's Scheme Policy and Design team on 1300 366 979 or email [Scheme Policy and Design](#). Please contact Scheme Policy and Design if you apply this scheme guidance and your determination is appealed.

ATTACHMENTS

Attachment A – Contraction of disease liability flow chart

ATTACHMENT A—CONTRACTION OF DISEASE LIABILITY FLOWCHART

