



Western Australia

**Firefighters and Emergency Volunteers
Legislation Amendment (Compensation)
Act 2016**

As at 21 Sep 2016

No. 28 of 2016

Extract from www.slp.wa.gov.au, see that website for further information

Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Act 2016

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(Compensation) Act 2016**

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**Firefighters and Emergency Volunteers
Legislation Amendment (Compensation)
Act 2016**

No. 28 of 2016

An Act to amend the *Bush Fires Act 1954*, the *Fire and Emergency Services Act 1998* and the *Workers' Compensation and Injury Management Act 1981*.

[Assented to 21 September 2016]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Bush Fires Act 1954* amended

3. Act amended

This Part amends the *Bush Fires Act 1954*.

4. Section 35A amended

In section 35A delete the definition of *loss or damage*.

5. Section 37 deleted

Delete section 37.

**Part 3 — *Fire and Emergency Services
Act 1998* amended**

6. Act amended

This Part amends the *Fire and Emergency Services Act 1998*.

7. Part 6B inserted

After section 36ZL insert:

**Part 6B — Compensation for injury, loss or
damage**

Division 1 — Preliminary

36ZM. Terms used

In this Part —

appropriate changes, to the WC&IM Act, has the meaning given in section 36ZP;

benchmark weekly earnings, in relation to a volunteer who receives compensation for an injury, means —

- (a) the estimate of the average weekly total earnings of full-time adult employees in Western Australia most recently published by the Australian Bureau of Statistics before the date of injury; or
- (b) if the Australian Bureau of Statistics ceases to publish the estimate of the amount referred to in paragraph (a), the amount fixed by, or determined in accordance with, the regulations;

BFA volunteer means —

- (a) a bush fire control officer appointed under the *Bush Fires Act 1954* section 38; or

- (b) a registered member of a bush fire brigade established under the *Bush Fires Act 1954* section 41;

compensable injury has the meaning given in the WC&IM Act section 159;

date of injury, in relation to a person who has contracted a specified disease, means the earlier of these days —

- (a) the day on which the person becomes totally or partially incapacitated for work by reason of the specified disease;
- (b) the day on which the person is first diagnosed by a medical practitioner as having contracted the specified disease;

injury has the meaning given in the WC&IM Act section 5(1);

injury policy means an insurance policy effected for the purposes of section 36ZQ(2);

medical practitioner has the meaning given in the WC&IM Act section 5(1);

Part 6B commencement day means the day on which *Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Act 2016* section 7 comes into operation;

registered volunteer means —

- (a) a BFA volunteer; or
- (b) a registered member of a FES Unit; or
- (c) an officer or member of a volunteer fire brigade as defined in the *Fire Brigades Act 1942* section 4(1) whose election or appointment has been approved by the FES Commissioner under section 30 of that Act; or
- (d) a registered member of an SES Unit; or

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(e) a registered member of a VMRS Group;

responsible agency means —

- (a) in relation to a BFA volunteer, the local government which —
 - (i) appoints the volunteer to be a bush fire control officer; or
 - (ii) maintains the bush fire brigade of which the volunteer is a registered member, as the case may be; and
- (b) in relation to any other registered volunteer, the FES Commissioner; and
- (c) in relation to an unregistered volunteer —
 - (i) if the unregistered volunteer engages in volunteer activities under the direction of a BFA volunteer, the local government which is the responsible agency for that BFA volunteer; and
 - (ii) in any other case, the FES Commissioner;

specified disease has the meaning given in the WC&IM Act section 49A;

unregistered volunteer means a person who is not a registered volunteer, but who engages in volunteer activities under the direction of a registered volunteer or a member of operational staff;

vehicle includes a rail vehicle, a vessel, an aircraft and any other thing used as a means of transport;

volunteer means a registered volunteer or an unregistered volunteer;

volunteer activities means —

- (a) in relation to a BFA volunteer or an unregistered volunteer working under the direction of a BFA volunteer, normal brigade

activities as defined in the *Bush Fires Act 1954* section 35A; and

- (b) in relation to any other registered volunteer or an unregistered volunteer working under the direction of such a volunteer, activities carried out by the volunteer unit of which the registered volunteer is an officer or member for the purposes for which that unit was formed; and
- (c) in relation to an unregistered volunteer working under the direction of a member of operational staff, FES activities engaged in at the direction of that member;

volunteer unit means —

- (a) a bush fire brigade established under the *Bush Fires Act 1954* section 41; or
- (b) a FES Unit; or
- (c) a volunteer fire brigade within the meaning given in the *Fire Brigades Act 1942* section 4(1); or
- (d) an SES Unit; or
- (e) a VMRS Group;

WC&IM Act means the *Workers' Compensation and Injury Management Act 1981*.

36ZN. When specified disease taken to be injury caused while engaged in volunteer activities

- (1) In this section —

FES employment has the meaning given in the WC&IM Act section 49A;

firefighting employment has the meaning given in the WC&IM Act section 49A;

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firefighting service means —

- (a) firefighting employment; or
- (b) volunteer service;

hazardous fire has the meaning given in the WC&IM Act section 49A;

hazardous firefighting service means —

- (a) FES employment; and
- (b) non-FES employment during which the worker attends hazardous fires at a rate at least equivalent to the rate of 5 hazardous fires per year; and
- (c) volunteer service during which the volunteer attends hazardous fires at a rate at least equivalent to the rate of 5 hazardous fires per year;

non-FES employment has the meaning given in the WC&IM Act section 49A;

qualifying period has the meaning given in the WC&IM Act section 49A;

volunteer service means service as a registered volunteer whose duties involve or involved responding to hazardous fires.

- (2) If a volunteer who has contracted a specified disease —
 - (a) as at the date of injury, had completed a period of firefighting service of, or periods of firefighting service in aggregate amounting to, at least the qualifying period for the specified disease; and
 - (b) is taken to have been exposed to the hazards of a fire scene in the course of the firefighting service; and
 - (c) in the case of a cancer of a kind mentioned in the WC&IM Act Schedule 4A item 13, satisfies

the conditions (if any) prescribed for such a cancer by regulations made under that Act,

the specified disease is, for the purposes of this Part, taken to have been caused to the volunteer while engaged in volunteer activities, unless the responsible agency proves the contrary.

- (3) For the purposes of subsection (2), a volunteer is taken to have been exposed to the hazards of a fire scene if the responsible agency is satisfied that the volunteer has completed a period of hazardous firefighting service of, or 2 or more periods of hazardous firefighting service in aggregate amounting to, at least the lesser of —
- (a) 5 years; and
 - (b) the qualifying period.

36ZO. Application of provisions of WC&IM Act under this Part

For the purpose of applying a provision of the WC&IM Act under this Part —

- (a) a reference in the WC&IM Act to a worker is to be read as a reference to a volunteer; and
- (b) a reference in the WC&IM Act to a worker's employer is to be read as a reference to a volunteer's responsible agency; and
- (c) a reference in the WC&IM Act to a worker's employment is to be read as a reference to a volunteer's service as a volunteer.

36ZP. Appropriate changes to WC&IM Act

For the purpose of this Part, appropriate changes to the WC&IM Act are —

- (a) any changes to that Act that are prescribed by the regulations for the purposes of this Part; and

- (b) any other changes to that Act that are necessary or convenient to give effect to this Part.

Division 2 — Insured compensation

36ZQ. Duty to insure

- (1) In this section reference to loss or damage does not include loss or damage that is caused by or results from reasonable wear or tear, mechanical or electrical breakdown, failure or breakage.
- (2) A responsible agency must effect and keep current insurance providing compensation for injury caused to present and former volunteers for which it is the responsible agency while engaged in volunteer activities, other than injury which is compensable under the WC&IM Act, where the date of injury is on or after the Part 6B commencement day.
- (3) A responsible agency must effect and keep current insurance providing compensation for loss of or damage to vehicles, appliances, equipment and apparatus of volunteer units which it establishes, maintains or authorises, where the loss or damage is caused on or after the Part 6B commencement day.
- (4) A responsible agency must effect and keep current insurance providing compensation for loss or damage caused to privately owned vehicles, appliances, equipment, apparatus and items of personal property in consequence of being used for or in connection with volunteer activities engaged in by a volunteer for which it is the responsible agency, where the loss or damage is caused on or after the Part 6B commencement day.

36ZR. Amount of insured compensation

- (1) Subject to subsection (4), the compensation for an injury to a volunteer to be provided by an injury policy is to be of the amount and for the purposes that would apply under the WC&IM Act if the volunteer were a worker and suffered that injury and the WC&IM Act (with the appropriate changes) applies accordingly.
- (2) Where, under the WC&IM Act, an amount of compensation to be provided by an injury policy depends on weekly earnings, references to weekly earnings are taken to be references to the greater of —
 - (a) the benchmark weekly earnings; or
 - (b) either —
 - (i) if the volunteer is a self-employed or unemployed person, the actual weekly earnings received by the volunteer; or
 - (ii) in any other case, the volunteer's weekly earnings calculated in accordance with the WC&IM Act.
- (3) WC&IM Act Schedule 1 clauses 8, 10, 11, 16, 17, 18, 18A and 19 apply (with the appropriate changes) to an injury policy as if they were set out in the policy.
- (4) The regulations may limit, with respect either to an individual volunteer or to volunteers generally, the amount of compensation for which a responsible agency is required by section 36ZQ(2) to insure.
- (5) The regulations may limit, with respect either to a single claim or to claims generally, the amount of compensation for which a responsible agency is required by section 36ZQ(3) or (4) to insure.

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- (6) A responsible agency may effect insurance which provides a greater amount of compensation than is required under this section.

36ZS. Terms of insurance

- (1) The terms of an injury policy must provide —
 - (a) that claims under the policy are subject to the same time limitation periods as would apply under the WC&IM Act if the injured volunteer were a worker and had suffered a compensable injury; and
 - (b) that a volunteer insured or proposed to be insured under the policy may be required to provide medical certificates or to submit to medical examinations, occupational or vocational assessments and the like for the purposes of the policy.
- (2) The regulations may —
 - (a) limit, modify or exclude any requirement in this Division to obtain or keep current insurance in respect of liabilities arising in prescribed circumstances or out of prescribed events; and
 - (b) otherwise limit, modify or exclude the requirement in this Division to obtain or keep current insurance.
- (3) Subject to subsection (1), the regulations may prescribe any or all of the terms and conditions of insurance required by this Division.
- (4) Subject to subsection (1), the regulations may prescribe the form of a policy providing insurance required by this Division.

Division 3 — Uninsured compensation

36ZT. Uninsured compensation for specified diseases

- (1) This section applies if —
 - (a) a volunteer contracts a specified disease; and
 - (b) the specified disease is taken to be an injury caused while engaged in volunteer activities; and
 - (c) the date of injury is on or after 13 November 2013 but before the Part 6B commencement day.
- (2) If this section applies, the volunteer is entitled to an amount of compensation equal to the amount that would be payable under an injury policy if the date of injury were on or after the Part 6B commencement day.

36ZU. Additional compensation for specified injuries

- (1) In this section —

prescribed amount has the meaning given in the WC&IM Act section 5(1);

specified injury means —

 - (a) death; or
 - (b) total loss of sight of both eyes; or
 - (c) total loss of sight of an only eye; or
 - (d) permanent and incurable loss of mental capacity resulting in total inability to work; or
 - (e) total and incurable paralysis of the limbs or of mental powers; or
 - (f) loss of both hands; or
 - (g) loss of a hand and foot; or
 - (h) loss of both feet; or

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- (i) severe facial scarring or disfigurement (including scarring or disfigurement as a result of burns); or
 - (j) severe bodily, other than facial, scarring or disfigurement (including scarring or disfigurement as a result of burns).
- (2) A volunteer who has suffered a specified injury while engaged in volunteer activities on or after the Part 6B commencement day is entitled to a further amount, in addition to any amount payable under an injury policy, so that the total amount received by or in respect of that volunteer in relation to that injury is equal to the prescribed amount as at the date on which the injury was caused multiplied by 2.36.

36ZV. Source of compensation under this Division

A responsible agency is to pay compensation to which a volunteer is entitled under this Division out of moneys appropriated by Parliament for that purpose.

Division 4 — General

36ZW. Payment of compensation

- (1) Subject to subsection (2), an amount payable under an injury policy or under section 36ZT or 36ZU is payable to the person or persons who would be entitled under the WC&IM Act to receive it if the injured volunteer were a worker and had suffered a compensable injury, and the WC&IM Act (with the appropriate changes) applies accordingly.
- (2) A spouse or de facto partner of the injured volunteer is to be taken for the purposes of this section to be wholly dependent on the injured volunteer's earnings.

- (3) If an amount payable under an injury policy or under section 36ZT or 36ZU is payable to more than one person it is to be apportioned between those persons as the regulations provide.

36ZX. Specified disease disputes

- (1) In this section —
specified disease dispute means a dispute in connection with the application or operation of section 36ZN or 36ZT.
- (2) The WC&IM Act Parts XI and XIII apply (with the appropriate changes) in relation to a specified disease dispute as if the specified disease dispute were a dispute as defined in the WC&IM Act section 176(1).
- (3) Despite the WC&IM Act section 217B(1), for the purposes of an action for damages brought independently of this Act, a decision of an arbitrator in relation to a specified disease dispute is not final or binding on the parties to the dispute.

**Part 4 — *Workers' Compensation and Injury
Management Act 1981* amended**

8. Act amended

This Part amends the *Workers' Compensation and Injury Management Act 1981*.

9. Section 49A amended

In section 49A insert in alphabetical order:

FES employment, in relation to a worker, means any period of firefighting employment during which the worker is engaged as a member or officer of a permanent fire brigade as defined in *Fire Brigades Act 1942* section 4(1);

firefighting employment means employment by or under the Crown in right of the State, a substantial part of the duties of which consists of firefighting duties, which —

- (a) is covered by an industrial award or industrial agreement applicable to firefighting; or
- (b) is prescribed to be firefighting employment for the purposes of this Act;

hazardous fire means —

- (a) a fire in a building; or
- (b) a fire in a vehicle, whether designed to move under its own power or to be towed and whether or not still moveable; or
- (c) a fire involving non-organic refuse or rubbish created by humans; or
- (d) a fire that is prescribed to be a hazardous fire for the purposes of this Division;

hazardous firefighting employment means —

- (a) FES employment; and
- (b) non-FES employment during which the worker attends hazardous fires at a rate at least equivalent to the rate of 5 hazardous fires per year;

non-FES employment, in relation to a worker, means any period of firefighting employment which is not FES employment;

10. Section 49B amended

Delete 49B(b) and insert:

- (b) as at the date of injury the worker is or has been in firefighting employment.

11. Section 49C amended

(1) In section 49C(1):

- (a) in paragraph (a) delete “before the date of injury, was employed as a firefighter for” and insert:

as at the date of injury, is or has been in firefighting employment for a period of, or periods in aggregate amounting to,

(b) delete paragraph (b) and insert:

- (b) is taken to have been exposed to the hazards of a fire scene in the course of the firefighting employment; and

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Part 4 Workers' Compensation and Injury Management Act 1981
amended

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(c) before “employment” (2nd occurrence) insert:

firefighting

(2) Delete section 49C(2) and (3) and insert:

(2) For the purposes of subsection (1), a worker to whom this Division applies is taken to have been exposed to the hazards of a fire scene if the employer is satisfied that the worker has completed a period of hazardous firefighting employment of, or 2 or more periods of hazardous firefighting employment in aggregate amounting to, at least the lesser of —

- (a) 5 years; and
- (b) the qualifying period.

Note: The heading to amended section 49C is to read:

When firefighting employment taken to contribute to specified disease

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