



On 14 May 2020, the **COVID-19 Legislation Amendment (Emergency Measures – Miscellaneous) Bill 2020** passed both houses of Parliament and received assent.

The Act introduced section **19B Presumptions relating to certain employment in relation to COVID-19** to the *Workers Compensation Act 1987* (the 1987 Act). The section commenced operation on 14 May 2020.

The new section establishes presumptive rights to compensation under the 1987 Act in respect of the disease COVID-19 for workers in certain prescribed employment that involves an elevated risk of exposure to COVID-19

The whole of the section is reproduced below:

19B Presumptions relating to certain employment in relation to COVID-19

- (1) If a worker, during a time when the worker is engaged in prescribed employment, contracts the disease COVID-19 (also known as Novel Coronavirus 2019), then for the purposes of this Act, it is presumed (unless the contrary is established)—
 - (a) that the disease was contracted by the worker in the course of the employment, and
 - (b) the employment—
 - (i) in the case of a person to whom clause 25 of Part 19H of Schedule 6 applies—was a substantial contributing factor to contracting the disease, or
 - (ii) in any other case—was the main contributing factor to contracting the disease.
- (2) A worker is taken to have contracted COVID-19 for the purposes of this Act if the result of a medical test—
 - (a) that complies with requirements prescribed by the regulations in relation to the disease, and
 - (b) that was carried out for the purpose of determining if the worker has contracted the disease,is a result prescribed by the regulations in respect of the disease.
- (3) A worker is taken to have contracted COVID-19 for the purposes of this Act if the worker is classified by a medical practitioner as having COVID-19, having satisfied the epidemiological or clinical criteria (or both) prescribed by the regulations for the purpose of making that classification.
- (4) For the purposes of this Act, the date of the injury in relation to COVID-19 is the date of whichever of the following occurs first—
 - (a) the worker is diagnosed by a medical practitioner as having COVID-19 following a prescribed test result, as referred to in subsection (2),
 - (b) the worker is classified by a medical practitioner as having COVID-19, as referred to in subsection (3),
 - (c) the worker dies as a result of COVID-19.

- (5) For the purposes of this Act, it is presumed (unless the contrary is established) that a worker the subject of a presumption under subsection (1) is incapable of work as a result of COVID-19 for the period starting on the date of the injury and ending (unless sooner ended by the death of the worker)—
- (a) on a date established in accordance with the regulations, or
 - (b) if no regulations are made under paragraph (a)—on a date that is 7 days after the date on which a medical practitioner certifies that the worker no longer has the disease.
- (6) This section applies to a casual worker in prescribed employment only if the worker has performed casual work in the employment on 1 or more of the 21 days preceding the date of the injury.
- (7) The regulations may make provision for or with respect to any matter relating to the application of this Act to or in respect of workers who have or are suspected of having COVID-19.
- (8) In particular, the regulations may make provision for or with respect to the following matters—
- (a) the modification of the provisions of this Act in their application to or in respect of workers who have COVID-19,
 - (b) (without limitation) the application of the Act to workers who suffer permanent impairment as a result of COVID-19,
 - (c) the use of employers' claims histories relating to COVID-19-related claims in calculating premiums payable under the Act,
 - (d) the sharing of the financial risk arising out of COVID-19 between all insurers under the Act, including through the imposition and enforcement of risk equalisation arrangements for that purpose,
 - (e) (without limiting clause 1 of Part 20 of Schedule 6) transitional provisions for or with respect to claims relating to confirmed or cases of COVID-19 arising before the commencement of this section.
- (9) In this section—
- prescribed employment** means employment in any of the following—
- (a) the retail industry (other than businesses providing only on-line retail),
 - (b) the health care sector, including ambulance officers and public health employees,
 - (c) disability and aged care facilities,
 - (d) educational institutions, including pre-schools, schools and tertiary institutions (other than establishments providing only on-line teaching services),
 - (e) police and emergency services (including fire brigades and rural fire services),
 - (f) refuges, halfway houses and homeless shelters,
 - (g) passenger transport services,
 - (h) libraries,
 - (i) courts and tribunals,

- (j) correctional centres and detention centres,
- (k) restaurants, clubs and hotels,
- (l) the construction industry,
- (m) places of public entertainment or instruction (including cinemas, museums, galleries, cultural institutions and casinos),
- (n) the cleaning industry,
- (o) any other type of employment prescribed by the regulations for the purposes of this definition.

The Act also amended **Schedule 6 Savings, Transitional and other Provisions** of the 1987 Act by inserting **Part 19N Provisions consequent on enactment of COVID-19 Legislation Amendment (Emergency Measures - Miscellaneous) Act 2020**.

Part 19N is reproduced here:

1 Definition

In this Part—

amending Act means the [COVID-19 Legislation Amendment \(Emergency Measures—Miscellaneous\) Act 2020](#).

2 Application of amendments

- (1) The amendments made to this Act by the amending Act extend to a worker who has confirmed COVID-19 before the commencement of the amending Act and, in that case, subclause (3) applies in substitution for section 19B(2) and (3) (as inserted by the amending Act) and references to those subsections in section 19B are taken to be modified accordingly.
- (2) Subclause (3) also applies in substitution for section 19B(2) and (3) (with necessary modifications to section 19B) until such time as regulations are made under those subsections.
- (3) For the purposes of this Act, a worker is taken to have contracted COVID-19 if the worker is determined to have the disease on the basis of medical opinion.

Regards

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