

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

Contents

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Bush Fires Act 1954</i> amended		
3.	Act amended	3
4.	Section 35A amended	3
5.	Section 37 deleted	3
Part 3 — <i>Fire and Emergency Services Act 1998</i> amended		
6.	Act amended	4
7.	Part 6B inserted	4
Part 6B — Compensation for injury, loss or damage		
Division 1 — Preliminary		
36ZM.	Terms used	4
36ZN.	When specified disease taken to be injury caused while engaged in volunteer activities	7
36ZO.	Application of provisions of WC&IM Act under this Part	9
36ZP.	Appropriate changes to WC&IM Act	9
Division 2 — Insured compensation		
36ZQ.	Duty to insure	10
36ZR.	Amount of insured compensation	11
36ZS.	Terms of insurance	12

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Contents

Division 3 — Uninsured compensation		
36ZT.	Uninsured compensation for specified diseases	13
36ZU.	Additional compensation for specified injuries	13
36ZV.	Source of compensation under this Division	14
Division 4 — General		
36ZW.	Payment of compensation	14
36ZX.	Specified disease disputes	15

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

8.	Act amended	16
9.	Section 49A amended	16
10.	Section 49B amended	17
11.	Section 49C amended	17

Western Australia

LEGISLATIVE ASSEMBLY

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

A Bill for

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*.

The Parliament of Western Australia enacts as follows:

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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.

1 **Part 2 — *Bush Fires Act 1954* amended**

2 **3. Act amended**

3 This Part amends the *Bush Fires Act 1954*.

4 **4. Section 35A amended**

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

6 **5. Section 37 deleted**

7 Delete section 37.

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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

- 1 (b) a registered member of a bush fire brigade
2 established under the *Bush Fires Act 1954*
3 section 41;
- 4 ***compensable injury*** has the meaning given in the
5 WC&IM Act section 159;
- 6 ***date of injury***, in relation to a person who has
7 contracted a specified disease, means the earlier of
8 these days —
- 9 (a) the day on which the person becomes totally or
10 partially incapacitated for work by reason of the
11 specified disease;
- 12 (b) the day on which the person is first diagnosed
13 by a medical practitioner as having contracted
14 the specified disease;
- 15 ***injury*** has the meaning given in the WC&IM Act
16 section 5(1);
- 17 ***injury policy*** means an insurance policy effected for
18 the purposes of section 36ZQ(2);
- 19 ***medical practitioner*** has the meaning given in the
20 WC&IM Act section 5(1);
- 21 ***Part 6B commencement day*** means the day on which
22 *Firefighters and Emergency Volunteers Legislation*
23 *Amendment (Compensation) Act 2016* section 7 comes
24 into operation;
- 25 ***registered volunteer*** means —
- 26 (a) a BFA volunteer; or
27 (b) a registered member of a FES Unit; or
28 (c) an officer or member of a volunteer fire brigade
29 as defined in the *Fire Brigades Act 1942*
30 section 4(1) whose election or appointment has
31 been approved by the FES Commissioner under
32 section 30 of that Act; or
33 (d) a registered member of an SES Unit; or

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- 1 (e) a registered member of a VMRS Group;
- 2 **responsible agency** means —
- 3 (a) in relation to a BFA volunteer, the local
- 4 government which —
- 5 (i) appoints the volunteer to be a bush fire
- 6 control officer; or
- 7 (ii) maintains the bush fire brigade of which
- 8 the volunteer is a registered member,
- 9 as the case may be; and
- 10 (b) in relation to any other registered volunteer, the
- 11 FES Commissioner; and
- 12 (c) in relation to an unregistered volunteer —
- 13 (i) if the unregistered volunteer engages in
- 14 volunteer activities under the direction
- 15 of a BFA volunteer, the local
- 16 government which is the responsible
- 17 agency for that BFA volunteer; and
- 18 (ii) in any other case, the FES
- 19 Commissioner;
- 20 **specified disease** has the meaning given in the
- 21 WC&IM Act section 49A;
- 22 **unregistered volunteer** means a person who is not a
- 23 registered volunteer, but who engages in volunteer
- 24 activities under the direction of a registered volunteer
- 25 or a member of operational staff;
- 26 **vehicle** includes a rail vehicle, a vessel, an aircraft and
- 27 any other thing used as a means of transport;
- 28 **volunteer** means a registered volunteer or an
- 29 unregistered volunteer;
- 30 **volunteer activities** means —
- 31 (a) in relation to a BFA volunteer or an
- 32 unregistered volunteer working under the
- 33 direction of a BFA volunteer, normal brigade

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

3 (b) in relation to any other registered volunteer or
4 an unregistered volunteer working under the
5 direction of such a volunteer, activities carried
6 out by the volunteer unit of which the
7 registered volunteer is an officer or member for
8 the purposes for which that unit was formed;
9 and

10 (c) in relation to an unregistered volunteer working
11 under the direction of a member of operational
12 staff, FES activities engaged in at the direction
13 of that member;

14 ***volunteer unit*** means —

15 (a) a bush fire brigade established under the *Bush*
16 *Fires Act 1954* section 41; or

17 (b) a FES Unit; or

18 (c) a volunteer fire brigade within the meaning
19 given in the *Fire Brigades Act 1942*
20 section 4(1); or

21 (d) an SES Unit; or

22 (e) a VMRS Group;

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

25 **36ZN. When specified disease taken to be injury caused**
26 **while engaged in volunteer activities**

27 (1) In this section —

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

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

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- 1 ***firefighting service*** means —
- 2 (a) firefighting employment; or
- 3 (b) volunteer service;
- 4 ***hazardous fire*** has the meaning given in the
- 5 WC&IM Act section 49A;
- 6 ***hazardous firefighting service*** means —
- 7 (a) FES employment; and
- 8 (b) non-FES employment during which the worker
- 9 attends hazardous fires at a rate at least
- 10 equivalent to the rate of 5 hazardous fires
- 11 per year; and
- 12 (c) volunteer service during which the volunteer
- 13 attends hazardous fires at a rate at least
- 14 equivalent to the rate of 5 hazardous fires
- 15 per year;
- 16 ***non-FES employment*** has the meaning given in the
- 17 WC&IM Act section 49A;
- 18 ***qualifying period*** has the meaning given the
- 19 WC&IM Act section 49A;
- 20 ***volunteer service*** means service as a registered
- 21 volunteer whose duties involve or involved responding
- 22 to hazardous fires.
- 23 (2) If a volunteer who has contracted a specified disease —
- 24 (a) as at the date of injury, had completed a period
- 25 of firefighting service of, or periods of
- 26 firefighting service in aggregate amounting to,
- 27 at least the qualifying period for the specified
- 28 disease; and
- 29 (b) is taken to have been exposed to the hazards of
- 30 a fire scene in the course of the firefighting
- 31 service; and
- 32 (c) in the case of a cancer of a kind mentioned in
- 33 the WC&IM Act Schedule 4A item 13, satisfies

- 1 the conditions (if any) prescribed for such a
2 cancer by regulations made under that Act,
3 the specified disease is, for the purposes of this Part,
4 taken to have been caused to the volunteer while
5 engaged in volunteer activities, unless the responsible
6 agency proves the contrary.
- 7 (3) For the purposes of subsection (2), a volunteer is taken
8 to have been exposed to the hazards of a fire scene if
9 the responsible agency is satisfied that the volunteer
10 has completed a period of hazardous firefighting
11 service of, or 2 or more periods of hazardous
12 firefighting service in aggregate amounting to, at least
13 the lesser of —
- 14 (a) 5 years; and
15 (b) the qualifying period.

16 **36ZO. Application of provisions of WC&IM Act under this**
17 **Part**

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

- 20 (a) a reference in the WC&IM Act to a worker is to
21 be read as a reference to a volunteer; and
22 (b) a reference in the WC&IM Act to a worker's
23 employer is to be read as a reference to a
24 volunteer's responsible agency; and
25 (c) a reference in the WC&IM Act to a worker's
26 employment is to be read as a reference to a
27 volunteer's service as a volunteer.

28 **36ZP. Appropriate changes to WC&IM Act**

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

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

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

3 **Division 2 — Insured compensation**

4 **36ZQ. Duty to insure**

- 5 (1) In this section reference to loss or damage does not
6 include loss or damage that is caused by or results from
7 reasonable wear or tear, mechanical or electrical
8 breakdown, failure or breakage.
- 9 (2) A responsible agency must effect and keep current
10 insurance providing compensation for injury caused to
11 present and former volunteers for which it is the
12 responsible agency while engaged in volunteer
13 activities, other than injury which is compensable
14 under the WC&IM Act, where the date of injury is on
15 or after the Part 6B commencement day.
- 16 (3) A responsible agency must effect and keep current
17 insurance providing compensation for loss of or
18 damage to vehicles, appliances, equipment and
19 apparatus of volunteer units which it establishes,
20 maintains or authorises, where the loss or damage is
21 caused on or after the Part 6B commencement day.
- 22 (4) A responsible agency must effect and keep current
23 insurance providing compensation for loss or damage
24 caused to privately owned vehicles, appliances,
25 equipment, apparatus and items of personal property in
26 consequence of being used for or in connection with
27 volunteer activities engaged in by a volunteer for
28 which it is the responsible agency, where the loss or
29 damage is caused on or after the Part 6B
30 commencement day.

- 1 **36ZR. Amount of insured compensation**
- 2 (1) Subject to subsection (4), the compensation for an
- 3 injury to a volunteer to be provided by an injury policy
- 4 is to be of the amount and for the purposes that would
- 5 apply under the WC&IM Act if the volunteer were a
- 6 worker and suffered that injury and the WC&IM Act
- 7 (with the appropriate changes) applies accordingly.
- 8 (2) Where, under the WC&IM Act, an amount of
- 9 compensation to be provided by an injury policy
- 10 depends on weekly earnings, references to weekly
- 11 earnings are taken to be references to the greater of —
- 12 (a) the benchmark weekly earnings; or
- 13 (b) either —
- 14 (i) if the volunteer is a self-employed or
- 15 unemployed person, the actual weekly
- 16 earnings received by the volunteer; or
- 17 (ii) in any other case, the volunteer's
- 18 weekly earnings calculated in
- 19 accordance with the WC&IM Act.
- 20 (3) WC&IM Act Schedule 1 clauses 8, 10, 11, 16, 17, 18,
- 21 18A and 19 apply (with the appropriate changes) to an
- 22 injury policy as if they were set out in the policy.
- 23 (4) The regulations may limit, with respect either to an
- 24 individual volunteer or to volunteers generally, the
- 25 amount of compensation for which a responsible
- 26 agency is required by section 36ZQ(2) to insure.
- 27 (5) The regulations may limit, with respect either to a
- 28 single claim or to claims generally, the amount of
- 29 compensation for which a responsible agency is
- 30 required by section 36ZQ(3) or (4) to insure.

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

4 **36ZS. Terms of insurance**

- 5 (1) The terms of an injury policy must provide —
- 6 (a) that claims under the policy are subject to the
7 same time limitation periods as would apply
8 under the WC&IM Act if the injured volunteer
9 were a worker and had suffered a compensable
10 injury; and
- 11 (b) that a volunteer insured or proposed to be
12 insured under the policy may be required to
13 provide medical certificates or to submit to
14 medical examinations, occupational or
15 vocational assessments and the like for the
16 purposes of the policy.
- 17 (2) The regulations may —
- 18 (a) limit, modify or exclude any requirement in this
19 Division to obtain or keep current insurance in
20 respect of liabilities arising in prescribed
21 circumstances or out of prescribed events; and
- 22 (b) otherwise limit, modify or exclude the
23 requirement in this Division to obtain or keep
24 current insurance.
- 25 (3) Subject to subsection (1), the regulations may prescribe
26 any or all of the terms and conditions of insurance
27 required by this Division.
- 28 (4) Subject to subsection (1), the regulations may prescribe
29 the form of a policy providing insurance required by
30 this Division.

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

15 **36ZV. Source of compensation under this Division**

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

19 **Division 4 — General**

20 **36ZW. Payment of compensation**

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

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

5 **36ZX. Specified disease disputes**

- 6 (1) In this section —
7 *specified disease dispute* means a dispute in connection
8 with the application or operation of section 36ZN
9 or 36ZT.
- 10 (2) The WC&IM Act Parts XI and XIII apply (with the
11 appropriate changes) in relation to a specified disease
12 dispute as if the specified disease dispute were a
13 dispute as defined in the WC&IM Act section 176(1).
- 14 (3) Despite the WC&IM Act section 217B(1), for the
15 purposes of an action for damages brought
16 independently of this Act, a decision of an arbitrator in
17 relation to a specified disease dispute is not final or
18 binding on the parties to the dispute.
19

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

3 **8. Act amended**

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

6 **9. Section 49A amended**

7 In section 49A insert in alphabetical order:
8

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

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

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

22 ***hazardous fire*** means —

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

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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

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

Part 4 Workers' Compensation and Injury Management Act 1981
amended

s. 11

1 (c) before "employment" (2nd occurrence) insert:

2

3 firefighting

4

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

6

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

14 (a) 5 years; and

15 (b) the qualifying period.

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

18 **When firefighting employment taken to contribute to specified**
19 **disease**

20
