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JURISDICTIONAL POLICY ADVICE NO. 2012/01 *Safety, Rehabilitation and Compensation Act 1988 (SRC Act)*

Additional provisions to section 7 of the SRC Act

PURPOSE

1. To advise of the changes made to the section 7 disease provisions in the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) by the *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011* (Firefighters Act).
2. New subsections 7(8) and 7(9) have been inserted and provide a rebuttable legal presumption that if an employee has:
 - > been employed as a firefighter for a certain period before being diagnosed with one of the prescribed cancers; and
 - > been exposed to the hazards of a fire scene during that period,their employment has contributed to a significant degree to the contraction of the disease.
3. New subsection 7(10) makes it clear that, if a firefighter does not qualify for presumptive workers' compensation cover under the new provisions, liability must continue to be assessed under the other relevant provisions in the SRC Act.
4. The new subsections apply to claims for compensation with a date of injury on or after 4 July 2011.

BACKGROUND

5. The Firefighters Act was developed in light of the evidence of positive benefits of similar presumptive legislation in North America.
6. The Firefighters Act provides a separate mechanism for firefighters to access compensation under the SRC Act. The Commonwealth is the first workers' compensation jurisdiction in Australia to provide this type of presumptive coverage for firefighters.

LEGISLATION

7. Section 7 of the SRC Act contains the provisions relating to diseases. New subsections 7(8), 7(9) and 7(10) have been inserted at the end of this section. Attachment A provides a copy of the new subsections.
8. Under the new provisions, if a firefighter has been exposed to the hazards of a fire scene and is diagnosed with one of the prescribed cancers and has served as a firefighter for the qualifying period, it will be presumed that the cancer is an occupational disease and is therefore compensable, unless proven otherwise.
9. Table 1 below sets out the cancers prescribed by the amendments to the SRC Act. The specific cancers and the associated minimum qualifying service for which a firefighter must have been engaged is listed below.
10. Item 13 in the table allows for further types of cancer and qualifying periods to be later prescribed by regulations made under section 122 of the SRC Act.

Table 1: Prescribed cancers

Item	Disease	Qualifying period
1	Brain cancer	5 years
2	Bladder cancer	15 years
3	Kidney cancer	15 years
4	Non-Hodgkin's lymphoma	15 years
5	Leukaemia	5 years
6	Breast cancer	10 years
7	Testicular cancer	10 years
8	Multiple myeloma	15 years
9	Primary site prostate cancer	15 years
10	Primary site ureter cancer	15 years
11	Primary site colorectal	15 years
12	Primary site oesophageal cancer	25 years
13	A cancer of a kind prescribed for this table	The period prescribed for such a cancer

PRESUMPTIVE LEGISLATION

11. The new subsections create a legal presumption that simplifies access to workers' compensation for those firefighters who qualify.
12. The decision maker will have to start with the presumption that the disease is compensable. The presumption can only be rebutted if the employer or determining authority provides evidence to contradict the presumed fact.

DATE OF APPLICATION

13. The new provisions only apply to claims with a date of injury on or after 4 July 2011.
14. If a claim has a date of injury on or after 4 July 2011, the qualifying period can begin before the commencement of the new provisions.
15. If the date of injury is before 4 July 2011 the claim falls outside the scope of the new provisions; it must be assessed against the other SRC Act disease provisions.

DEEMING DATE OF INJURY

16. As noted above, the date of injury will decide if the new provisions apply.
17. Cancers are classified as diseases and therefore section 7(4) of the SRC Act will deem the date of injury to be the earliest of:
 - > the day the employee first sought medical treatment for the disease; or
 - > the day the disease resulted in the death of the employee or first resulted in incapacity for work or impairment of the employee.

FIREFIGHTERS

18. The new provisions only apply to persons employed as a firefighter by the Commonwealth, a Commonwealth authority or a licensed corporation.
19. Subsection 7(9) defines firefighters as employees who undertake firefighting duties as a 'substantial portion of their duties'.
20. To ascertain whether a person is a firefighter for the purpose of applying the new provisions, it may be necessary to obtain a duty statement or like information from the employer, to determine whether firefighting duties formed a substantial portion of the claimant's duties during the relevant qualifying period.
21. Coverage under the new provisions extends to current employees and retired firefighters whose qualifying period of service occurred or started before the commencement of the new provisions.
22. Coverage under the new provisions applies to former members of the Australian Defence whose qualifying period of service was before 30 June 2004.
23. Volunteer firefighters declared as persons covered under the SRC Act by way of Ministerial declaration are not covered under the new provisions.

THRESHOLD TESTS

24. To qualify, firefighters would need to meet the following threshold test. The firefighter must:
 - > suffer from a prescribed cancer; and
 - > have been employed:
 - as a firefighter
 - by a relevant employer
 - for the prescribed qualifying period before the cancer was sustained; and
 - > have been exposed to the hazards of a fire scene during the qualifying period.

PREScribed CANCERS

25. Twelve types of primary site cancer and the relevant qualifying employment periods are prescribed in the table at subsection 7(8).
26. Providing the firefighter has been diagnosed with one of these cancers, their employment will be taken to have been the significant cause of the cancer.
27. Cancers present at the specified sites will not be covered if they are found to be secondary—that is, if they originated in and spread from another part of the body—even if cancer then becomes present in one of the sites in the prescribed list.
28. An aggravation of cancers already suffered, which includes acceleration or recurrence of a cancer, is not covered by the new provisions.
29. Other types of cancer may be prescribed by regulations at a later date.

QUALIFYING PERIODS

30. The qualifying periods for each type of cancer listed are tabled in subsection 7(8).
31. Before a firefighter is first diagnosed with the prescribed disease, they must have been employed as a firefighter for the prescribed qualifying period for that cancer.
32. Subsection 7(9) allows firefighters to add up cumulative periods of service to satisfy the qualifying period. Those employed for two or more separate periods that add up to the qualifying period, are taken to have been employed for the qualifying period.
33. The employment, or periods of employment, must be with an employer whose firefighters are covered under the SRC Act, that is:
 - > Commonwealth government agencies and statutory authorities
 - > ACT Government and its agencies
 - > national employers who have been granted a licence for workers' compensation by the Safety, Rehabilitation and Compensation Commission
 - > former members of the Australian Defence Force who ceased employment before 1 July 2004.

EXPOSED TO THE HAZARDS OF FIRE

34. It is not necessary for the firefighter to identify which fire scene was the contributing factor. The claimant must merely establish that firefighting duties made up a substantial portion of his or her duties and that he or she was employed as a firefighter for the qualifying period of service before the cancer was diagnosed.

OTHER AVENUES OF COMPENSATION

35. Subsection 7(10) makes it clear that firefighters who do not qualify for compensation under the new provisions are not limited in their right to claim compensation assessed under the other liability provisions of the SRC Act.
36. For example, in the event that the cancer claimed is of a kind that is not prescribed in subsection 7(8), the decision maker should proceed to consider occupational diseases in subsection 7(1). In the event that coverage does not exist under subsection 7(1) the decision maker must turn their mind to the significant employment contribution test in section 5B of the SRC Act.
37. The exclusionary provisions in the SRC Act must also be considered, and if these apply, liability for compensation will not exist.

REVIEW OF THE NEW PROVISIONS

38. The Minister is required to have an independent review of the operation of the new provisions undertaken and completed by 31 December 2013. The reviewer must provide the Minister with a written report and the report must be published on the departmental website so that the public may have access to it.

PROCESSES AND PROCEDURES

39. Determining authorities are advised to make sure suitable processes and procedures are in place so that these amendments are applied correctly to all new claims for compensation.

MORE INFORMATION

40. For more information about this advice email Comcare's Compensation Policy Team at compensation.policy@comcare.gov.au or call 1300 366 979.

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SAFETY, REHABILITATION AND COMPENSATION ACT 1988

1 AFTER SUBSECTION 7 (7)

Insert:

- (8) If an employee:
- (a) suffers a disease mentioned in the following table; and
 - (b) before the disease was sustained, was employed as a firefighter for the qualifying period mentioned for that disease; and
 - (c) was exposed to the hazards of a fire scene during that period; and
 - (d) in the case of a cancer of a kind covered by item 13 of the following table—satisfies the conditions (if any) prescribed for such a cancer;

the employment is, for the purposes of this Act, taken to have contributed, to a significant degree, to the contraction of the disease, unless the contrary is established.

Item	Disease	Qualifying period
1	Primary site brain cancer	5 years
2	Primary site bladder cancer	15 years
3	Primary site kidney cancer	15 years
4	Primary non-Hodgkins lymphoma	15 years
5	Primary leukemia	5 years
6	Primary site breast cancer	10 years
7	Primary site testicular cancer	10 years
8	Multiple myeloma	15 years
9	Primary site prostate cancer	15 years
10	Primary site ureter cancer	15 years
11	Primary site colorectal cancer	15 years
12	Primary site oesophageal cancer	25 years
13	A cancer of a kind prescribed for this table	The period prescribed for such a cancer

- (9) For the purposes of subsection (8):
- (a) an employee is taken to have been employed as a firefighter if firefighting duties made up a substantial portion of his or her duties; and
 - (b) an employee who was employed as a firefighter for 2 or more periods that add up to the qualifying period is taken to have been so employed for the qualifying period; and
 - (c) an employee is taken to have been employed as a firefighter only if he or she was (disregarding the effect of any declarations under subsection 5(15)) employed as a firefighter by the Commonwealth, a Commonwealth authority or a licensed corporation.
- (10) Subsection (8) does not limit, and is not limited by, subsections (1) and (2).

2 REVIEW OF AMENDMENT

- (1) The Minister must cause an independent review of the operation of the amendment made by item 1 to be undertaken and completed by 31 December 2013.
- (2) The person who undertakes the review must give the Minister a written report of the review.
- (3) The report must be published on the Department's website.

3 APPLICATION

The amendment made by item 1 applies in relation to a disease that an employee sustains on or after 4 July 2011.