Australian Government

REVIEW OF THE SAFETY, REHABILITATION AND COMPENSATION AMENDMENT (FAIR PROTECTION FOR FIREFIGHTERS) ACT 2011

REPORT – DECEMBER 2013

Senator the Hon. Eric Abetz

Minister for Employment

Parliament House

CANBERRA ACT 2600

Dear Minister,

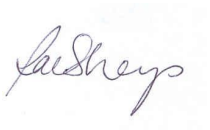
I am pleased to advise that I have completed the review of the *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011*, as required by that Act and in accordance with the Terms of Reference.

Although conducted over a short period of time, the review has touched on the major issues with the legislation and I consulted with the key stakeholders.

Given the short time during which the *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011* has been in force, and the limited number of claims made during that period, there was minimal data to be considered. For those reasons, the primary recommendation is to conduct a further review in five years. However, there are some other adjustments which could be made in the mean time to streamline the processing of claims pursuant to the Act.

I would like to thank the staff of the Department who assisted in this review late into December. Of course, any errors, omissions or oversights in the report are my responsibility.

Yours sincerely



24 December 2013

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Terms of reference

On 7 December 2011, the *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011* (the Firefighters' Act) amended the disease provisions contained in section 7 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) to simplify access to compensation for firefighters covered by the SRC Act.

The amendments introduced a presumption of liability for 12 types of prescribed cancers suffered by firefighters who meet certain qualifying requirements. The presumption applies to those firefighters who are diagnosed with the disease on or after 4 July 2011.

The Firefighters' Act required that the responsible Minister commission an independent review of these provisions to be undertaken and completed no later than 31 December 2013.

This review of the Firefighters' Act aims to assess whether the amendments are operating as intended and have streamlined the determination of claims made by those firefighters seeking compensation for the listed cancers.

The review will inquire and report on:

- how effective and efficient the firefighter provisions have been in providing streamlined determination of claims made by those firefighters seeking compensation for the prescribed cancers and consideration of the appropriateness of the prescribed cancers;
- what (if any) issues have emerged in the operation of the firefighter provisions, including whether the date of manifestation should be maintained;
- whether there are other ways to enable the streamlining of the determination of claims made by firefighters consistent with contemporary workers' compensation principles; and
- the affordability of any proposed recommendations.

Recommendations

No.	Recommendation	Page
1	I recommend that, consistent with recommendations made by Mr Hanks QC, claim determination time frames should be established under the SRC Act.	15
2	I recommend that Comcare modify the information initially requested from employers to ensure the request is directed only to the key elements of the firefighter provisions, namely: • the employment of the claimant, including whether firefighting was a substantial portion of the employee's duties, • whether the employee meets the qualifying period, • whether the employee was exposed to the hazards of a fire scene during that period, and • whether the employer sees any reason to rebut the presumption that the employee's employment contributed, to a substantial degree, to the disease. If those factors are not made out, Comcare should then request further information to determine whether the claim should be accepted under other provisions of the SRC Act.	15
3	I recommend that Comcare and relevant employers, with input from the relevant unions, jointly develop education programs to improve the awareness of the firefighter provisions.	17
4	I recommend that employers consider the feasibility of targeted medical assessments for the prescribed cancers for serving firefighters.	17
5	I recommend the current list of prescribed cancers in the Firefighters' Act be maintained.	21
6	I recommend the Government conduct a further review of the firefighter provisions in five years, with an emphasis on developments in the relevant science, and to ensure that these provisions continue to streamline the determination of claims made by firefighters consistent with contemporary workers' compensation principles.	22
7	I recommend that a term of reference of the recommended review of the firefighter provisions (**Recommendation 6**) be to consider whether lung cancer in non-smokers should be included in the list of prescribed cancers.	24
8	I recommend the current date of manifestation be maintained.	28

Section One: Introduction

The Firefighters' Act

1.1 On 4 July 2011, a private member's Bill was introduced into the House of Representatives by the Hon Adam Bandt MP, member for Melbourne. The *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011* (the **Bill**) was intended to amend the *Safety, Rehabilitation and Compensation Act 1988* (the **SRC Act**) to provide simplified access to compensation for firefighters who contracted cancer in the course of their employment protecting the community.

1.2 On 5 July 2011, the Bill was referred to the Senate Standing Legislation Committee on Education, Employment and Workplace Relations (the **Committee**) for inquiry and report. The Committee received 27 submissions from individuals and organisations, and held public hearings in Melbourne, Canberra and Perth and conducted a number of site visits in Melbourne, Geelong and Brisbane. The Committee also conducted a review of the relevant literature available at that time. The Committee published its report into the Bill in September 2011 (the **Committee's Report**).[1]

1.3 Following publication of the Committee's Report, some minor amendments were made to the Bill (in accordance with the Committee's recommendations) and it was reintroduced to the Parliament on 19 September 2011. The Bill received Royal Assent on 6 December 2011 and the *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011* (the **Firefighters' Act**) commenced operation on 7 December 2011.

1.4 The Firefighters' Act introduced amendments to the SRC Act, and provided that those amendments apply only to disease sustained on or after 4 July 2011. The Firefighters' Act also mandated this review.

The Firefighter Provisions

1.5 The Firefighters' Act inserted subsections 7(8) – (10) into the SRC Act (the **firefighter provisions**). The firefighter provisions apply to firefighters employed by the Commonwealth and the Australian Capital Territory (**ACT**) Government who are covered for the purposes of workers' compensation by the SRC Act.

1.6 Section 7(8) of the SRC Act contains a presumptive test for liability: if a firefighter (past or present[2]) contracts a primary cancer of a prescribed kind, has been a firefighter for the

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1 Senate Education, Employment and Workplace Relations Legislation Committee, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions]*, September 2011. Available at: www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_Employment_and_Workplace_Relations/Completed_inquiries/2010-13/firefighters/report/index

2 The definition of employee in s 5 of the SRC Act includes a person who has ceased to be an employee: s 5(9).

relevant qualifying period for that cancer, and during that employment was exposed to the hazards of a fire scene, the firefighter's employment is taken to have contributed, to a significant degree, to the contraction of the disease. As a result, compensation is payable by Comcare: s 14(1) of the SRC Act.

1.7 That presumption is, however, rebuttable. The claim can be refuted by establishing that the cancer is not work related. Although it is the determining authority that ultimately makes the decision, in relation to the firefighter provisions, the determining authority would rely on information provided by an employer.

1.8 Section 7(8) reads:

> (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

1.9 To date, no further cancers have been prescribed for the purposes of the table in s 7(8).

1.10 Section 7(9) creates a further presumption to assist in determining whether a particular employee is (or was) employed "as a firefighter" for the purposes of s 7(8). If firefighting duties made up a substantial portion of the employee's duties, the employee is taken to have been employed as a firefighter: s 7(9)(a).

1.11 Further, where a firefighter has completed separate periods of service, those periods can be added together to determine whether that firefighter meets the qualifying period: s 7(9)(b).

1.12 Section 7(9)(c) provides that employees must have been employed by the Commonwealth, a Commonwealth authority or a licensed corporation, regardless of any declarations made under s 5(15). This means the firefighter provisions do not apply to people who are volunteer firefighters under the *Emergencies Act 2004* (ACT).

1.13 Section 7(10) confirms that s 7(8) applies regardless of ss 7(1) and (2). That is, they do not limit each other.

1.14 Sections 7(9) and (10) read:

> (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).

1.15 The firefighter provisions can only be used to make a presumptive determination for an employee if the prescribed cancer is diagnosed on or after 4 July 2011 (the **date of manifestation**): Schedule 1, item 3 of the Firefighters' Act.

The Review Process

1.16 As required by the Firefighters' Act,[3] in December 2013 the Minister for Employment commissioned this review. The terms of reference are set out at the start of this report.

1.17 During the course of the review, I met with representatives from the following key stakeholders:

[3] Schedule 1, Item 2(1).

(a) the United Firefighters Union of Australia (the **UFUA**),

(b) the ACT Government,

(c) Comcare,

(d) Airservices Australia,

(e) The Department of Veterans' Affairs, and

(f) The Department of Defence.

1.18 I also received written submissions from the UFUA and the Department of Environment, feedback from the Australian Council of Trade Unions (endorsing the UFUA submission) and further information from the Airservices Australia, the ACT Government and Comcare.

1.19 This report addresses the terms of reference by topic. However, given the nature and limited number of the recommendations, the affordability of the recommendations (the fourth term of reference) is discussed in relation to each recommendation, rather than in a separate section. I note that none of the recommendations should have an appreciable financial impact on premium payers. I do not recommend anything that will change the claim liabilities of employers.

Acknowledgements

1.20 I wish to record my thanks for the assistance of Mr Philip Hartley, Mr Daniel Egan and Ms Siân Bolitho of the Department of Employment. Their hard work at this busy time of year was greatly appreciated and meant that the review considered all the major issues and was able to be finished on time.

1.21 I would also like to register my thanks to those people who were able to meet with me on short notice. Their views and comments were informative and very helpful.

1.22 Finally, I would like to thank Comcare for responding quickly to my multiple requests for information.

Section Two: The effectiveness of the Firefighter Provisions

Term of Reference 1

The review will inquire and report on:

- ***how effective and efficient the firefighter provisions have been in providing streamlined determination of claims made by those firefighters seeking compensation for the prescribed cancers*** and consideration of the appropriateness of the prescribed cancers.

Term of Reference 3

The review will inquire and report on:

- ***whether there are other ways to enable the streamlining of the determination of claims made by firefighters consistent with contemporary workers' compensation principles.***

Section One provides an analysis of the experience in using the firefighter provisions, whether they have resulted in more streamlined determination of claims, and ways to enable the further streamlining of claims, consistent with contemporary workers' compensation principles.

2.1 As at December 2013 there are approximately 1,250 firefighters currently covered by the firefighter provisions. They are employed as follows:[4]

(a) 350 in the ACT Government;

(b) 800 at Airservices Australia; and

(c) 100 at the Department of the Environment.[5]

Claims experience to date

Comcare's processes

2.2 When a workers' compensation claim is submitted to Comcare, claimants are required to complete a standard claim form, regardless of their claim circumstances. Firefighters must complete the same standard form. The claims assessment area within Comcare reviews

[4] Information provided by premium paying stakeholders.

[5] The Department of Environment also has employees in the National Parks who play a small part in firefighting in relation to bush fires, but their firefighting role is part of a much larger role.

each claim and applies a generic hierarchy of tests to establish eligibility for compensation and other benefits prescribed by the SRC Act.

2.3 Comcare advised that the information it requests from employers in relation to applications made by firefighters for occupational cancers is:

(a) to confirm that the injured worker was/is employed as a firefighter;

(b) the period of their employment;

(c) whether firefighting duties are a substantial portion of their duties; and

(d) where they are exposed to the hazards of a structural fire, as much information as possible regarding possible exposure to any chemicals.

The number of claims

2.4 Since 6 December 2011, there have been very few claims falling within the firefighter provisions. There have been a total of eight claims for compensation for occupational cancers made by firefighters since that date.

2.5 Three of those claims were accepted because of the firefighter provisions.[6] Two of the claims that did not qualify for the presumption in the firefighter provisions were accepted under other provisions of the SRC Act. The final three claims that were rejected did not qualify for compensation under the firefighter provisions (two employees were diagnosed before the date of manifestation and the other did not meet the relevant qualifying period), and nor were they accepted under other provisions of the SRC Act.

2.6 That data necessarily relates to claims made during a short period of time (some 24 months).

2.7 The Committee explored the possibility that the proposed provisions could give rise to a significant increase in premiums for affected employers in the Comcare scheme because of the large number of anticipated claims. Examples were provided of the presumptive legislation in other jurisdictions, such as Alberta in Canada. The Committee was informed that the presumptive legislation in Alberta covers approximately 13,500 firefighters – 3,500 full-time and 10,000 volunteers or part-time. However, for the period 2006-2010, there were only 19 claims for occupational cancer in Alberta.[7]

2.8 The low number of claims under the firefighter provisions could be due to a number of reasons, including perceived difficulties with proving those diseases are work-related, or the small number of firefighters covered by the scheme. Interestingly, data submitted by

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6 One of the claims was originally rejected on the basis that the date of diagnosis was prior to the date of manifestation. However, following a reconsideration that claim was accepted. (Information supplied by Comcare, confirmed by the UFUA).

7 Committee's Report, p30 at [3.40].

Comcare indicates that between 2006 and 3 July 2011 only six claims were made by firefighters covered by the SRC Act, for compensation for occupational cancer.

2.9 The SRC Act experience, in particular the low claim numbers since the enactment of the firefighter provisions, is consistent with the number of firefighters covered by the provisions, and with the actual experience in Canada.

The duration of the claims process

2.10 For the 2012-2013 financial year, the average time to determine a claim made by firefighters for a prescribed cancer was 88 days, and for the current financial year (to date), the average time has been 82 days.[8] That compares starkly with the average time taken by Comcare to consider all disease claims (excluding psychological diseases), which was 33 days in 2012-2013 and is currently 57 days in the 2013-2014 financial year.

2.11 Comcare advised that the determination times for claims against s 7(8) exceeded the average determination timeframes because five of the eight claims were also assessed against other criteria in the SRC Act, such as s 7(1). Comcare does not separately record the time it takes to determine whether s 7(8) applies. Comcare advised that the claim determination times for the three claims that were approved because of s 7(8) were 113, 170 and 88 days. Notably the first of those was rejected after 65 days, and then accepted upon reconsideration after a further 48 days.

2.12 The determination process applied to claims by firefighters for the prescribed cancers does not appear to be achieving the efficiencies intended by the Firefighters' Act.

Stakeholder Views

2.13 The majority of stakeholders believed that the firefighter provisions are operating well. The UFUA cited concerns about the awareness among firefighters that the presumptive legislation is actually available.

2.14 The UFUA also identified education and awareness as key elements of ensuring the ongoing health and safety of firefighters. In its written submission it referred to the Canadian experience where a comprehensive education program has resulted in better awareness of the presumptive provisions, and which has also led to firefighters being screened for cancer earlier which has led to better treatment outcomes and successful return to pre-disease duties.[9]

2.15 Airservices Australia also noted that firefighters are generally not aware of the firefighter provisions. Airservices Australia was of the opinion that the legislation is operating as intended in relation to the determination of claims.

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8 Data supplied by Comcare.

9 Written Submissions of the UFUA, p7.

2.16 However, Airservices Australia also noted that the determination process seemed particularly lengthy and demanding in terms of the body of information requested by Comcare to support the claim, which included details of what chemicals a particular employee had been exposed to. Airservices Australia was of the view that the preconditions for the application of the presumption were met in the claims that were made (in terms of the cancer, length of service and date of diagnosis). However, it was still asked to provide significant extra information, which took some time to collate.

2.17 Airservices Australia also noted that it would benefit from knowing the reasons a claim was rejected so that it could provide better information to its employees (and Comcare) and better manage its claims processes.

Discussion

2.18 Stakeholders were positive about the firefighter provisions. Employees have been able to rely on the presumption to assist in their claims for compensation, claims that might have otherwise been hard to establish. However, the time taken to determine those claims is concerning. A protracted consideration process would be stressful for claimants, and it was precisely what the Firefighters' Act was seeking to avoid.

2.19 When considering the Bill in 2011, the Committee was acutely aware of the burden of proof that firefighters were faced with when seeking compensation or coverage for medical expenses. The Committee was informed that in the absence of the kind of presumptive mechanism created by the firefighter provisions, firefighters had to go through adversarial, costly and often protracted proceedings to establish a link between their illness and their firefighting and causation between a specific fire incident and their illness.[10]

2.20 The Committee also cited submissions from the UFUA and Slater and Gordon Lawyers that highlighted the disincentive to access entitlement or compensation because of the emotional and financial cost of litigation. Typically medical advice at these times is to minimise stress and focus on cancer treatment.[11]

2.21 Efficient and effective claims determination was one of the goals of the Firefighters' Act.

2.22 In his 2013 review of the SRC Act, Mr Peter Hanks QC considered at length the potential for "needless disability" arising from non-medical factors such as administrative delays and barriers imposed by claims handling systems.[12] Eliminating, or minimising those barriers lessens the risk of needless disability. Efficient claims administration can significantly impact on positive treatment and rehabilitation of an injured employee. Mr Hanks stated (at [9.3]) that:

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10 Committee's Report, p21 at [3.2].

11 Committee's Report, p21 at [3.3] – [3.4].

12 Peter Hanks QC, *Safety, Rehabilitation and Compensation Act Review Report*, February 2013, p158. Available at: http://docs.employment.gov.au/node/31849

In modern workers compensation schemes, legislation is designed to facilitate early reporting of injuries, easy access to benefits and quick decisions. That is achieved through the trio of:

(a) legislated timeframes for the reporting of injuries and lodgement of claims;

(b) access to provisional liability; and

(c) legislated timeframes for the determination of claims.

2.23 Mr Hanks made a number of recommendations that related to improving claim determinations more broadly. In particular, Recommendations 9.1 and 9.3, which were:

> ***Recommendation 9.1***
> I recommend that the SRC Act be amended to allow for electronic lodgement of claims forms.

> ***Recommendation 9.3***
> I recommend that the SRC Act be amended to include statutory timeframes for the determination of claims and that, on a failure to meet those timeframes, the claim be deemed to be rejected.
>
> The determining authority must determine the claim:
>
> a) Within 30 days for injury;
>
> b) Within 60 days for disease; or
>
> c) If provisional liability is being met as a result of a previously lodged injury notification, by the end of the provisional liability period;
>
> Whichever is the longer.

2.24 Adoption of both of those recommendations would also assist in more timely determinations for claims that have a specific eligibility (or claimed eligibility) against the firefighter provisions. Electronic claim forms would provide a low cost mechanism by which claimants or employers are able to specifically identify their circumstances in order to trigger a faster consideration of claims against the firefighter provisions. The inclusion of statutory timeframes for the determination of claims is a broader issue for all claims, but would improve the application of the firefighter provisions.

2.25 The firefighter provisions are simple in form. There are only four factors that need to be considered. They are whether the employee:

(a) was a firefighter (ie whether they were a Commonwealth employee who had the substantial duties of a firefighter): ss 7(8)(b), 7(9)(a) and 7(9)(c) of the SRC Act;

(b) was exposed to the hazards of a (single) fire-scene during that employment: s 7(8)(c) of the SRC Act;

(c) suffers one of the prescribed cancers diagnosed after 4 July 2011: s 7(8)(a) of the SRC Act and Item 3, Schedule 1 of the Firefighters' Act; and

(d) prior to sustaining the disease was employed as a firefighter for the qualifying period stipulated for that cancer: s 7(8)(d) and s 7(9)(b) of the SRC Act.

2.26 If each of those matters is made out, the employee's employment is taken to have contributed to a significant degree to the contraction of the cancer, unless the contrary is established.

2.27 Assuming that for any claim that the diagnosis of the disease (and date of that diagnosis) is clear, it only remains to verify information about the employee's duty profile, all of which would come from the relevant employer. For the three premium paying employers of firefighters covered by the SRC Act, confirming that information should be relatively simple.

2.28 Assuming the employer confirms all of those factors, decisions about whether a firefighter can rely on the presumptive test should be made within a very short time of receiving the relevant information.

2.29 Comcare's current workers' compensation claim form is generic and is not well suited or efficient for establishing the kind of claim that is likely to be made relying on the firefighter provisions.

2.30 As detailed at [2.3] above, Comcare currently requests specific information from employers about the factors which determine whether a claim can be approved pursuant to the firefighter provisions, but it also requests information that is not required to make that decision. The firefighter provisions require that an employee be exposed to "the hazards of a fire scene" during the relevant qualifying period. Neither hazards nor fire scene is further defined. However, Comcare currently requests from employers "where [the employee is] exposed to the hazards of a structural fire, as much information as possible regarding possible exposure to any chemicals".

2.31 The extent to which that information materially assists Comcare to establish the eligibility of a claim against the firefighter provisions is unclear (over and above the inherent confirmation that the employee had been exposed to "a fire scene" by identifying the various chemicals the employee had been exposed to).

2.32 That information would generally be used to investigate claims considered against the criteria in s 7(1) of the SRC Act. Airservices Australia was the only current employer that commented on this requirement. It indicated that a significant administrative effort was required to compile the information requested by Comcare and that (at least in relation to the initial claims) it took quite some time.

2.33 As the determining authority, Comcare has a responsibility to assess and determine claims in accordance with the relevant legislative criteria. It is not, and should not, simply be a rubber stamp for providing compensation. However, in a situation where the eligibility criteria are clearly made out based on information provided by the employer, and the employer's position is also clear in that it does not include any indication that it will seek to rebut the presumption that the employee's cancer was caused by her or his employment, it is difficult

to see the need for Comcare to obtain extra information at the outset, or to take such a long time in determining the claim.

2.34 Any claim received by Comcare that is identified as a claim by a firefighter in relation to one of the prescribed cancers should be tested against the firefighter provisions (and only those provisions) as a priority.

2.35 If a claim fails to meet any of the criteria required by the firefighter provisions, Comcare can then test a claim against other injury or disease criteria defined by the SRC Act. Clearly, additional hazard information that is currently gathered at the outset of the claim is necessary in order to determine an employee's eligibility pursuant to s 7(1).

2.36 Comcare should reassess the need for information that goes beyond what is required to determine whether the firefighter provisions apply, until it is determined that the extra information is required.

Recommendation 1

I recommend that, consistent with recommendations made by Mr Hanks QC, claim determination time frames should be established under the SRC Act.

Recommendation 2

I recommend that Comcare modify the information initially requested from employers to ensure the request is directed only to the key elements of the firefighter provisions, namely:

- the employment of the claimant, including whether firefighting was a substantial portion of the employee's duties,
- whether the employee meets the qualifying period,
- whether the employee was exposed to the hazards of a fire scene during that period, and
- whether the employer sees any reason to rebut the presumption that the employee's employment contributed, to a substantial degree, to the disease.

If those factors are not made out, Comcare should then request further information to determine whether the claim should be accepted under other provisions of the SRC Act.

Cost implications of recommendations

2.37 There may be some minor administrative costs to Comcare to establish improved claims handling to ensure that the provisions achieve the simplification for occupational cancer claims as they were intended. However, given the limited number of claims, that cost should not be prohibitive. In any case, the streamlining of the information gathering process should ultimately result in reduced administrative costs in managing these types of claims.

More positive health outcomes

2.38 Contemporary workers' compensation principles reflect the importance of rehabilitation, which is supported by early intervention and treatment. As noted by Mr Hanks QC in his review of the SRC Act:[13]

> 6.1 All workers compensation schemes in Australia emphasise a timely, safe and durable return to work for injured employees, who are encouraged to participate in rehabilitation as soon as they are able to do so.
>
> 6.2 Early recovery from injury brings with it a range of benefits, for both injured employees and their employers. For employees, there is the obvious benefit of recovering from injury more quickly, and returning to work and life. For employers, early rehabilitation means that the investment in existing employees is not lost, productivity and workplace morale are improved and compensation costs (in the form of premiums for premium payers, and compensation payments for licensees) are lowered.
>
> 6.3 Some of the principal factors identified as contributing to good rehabilitation and early recovery are:
>
> (a) early intervention in treating the injury or disease;
>
> (b) early workplace-based rehabilitation;
>
> (c) effective claims management; and
>
> (d) well-designed and properly targeted benefits and dispute-resolution structures.

2.39 As detailed above at [2.14], the opportunity to achieve more positive health outcomes, as a consequence of the enactment of the firefighter provisions, was noted by the UFUA.[14] Increased awareness of the correlation between firefighting and certain cancers has led to health programs in Canada that encourage more frequent and targeted health assessments of firefighters.

2.40 Early detection, diagnosis and treatment of diseases leads to improved treatment and rehabilitation outcomes. In the long term, that should also reduce the cost of claims and premiums.

2.41 I recommend that Comcare and employers, with input from the relevant unions, jointly develop education programs to improve the awareness of the firefighter provisions in the SRC Act, and that employers consider the feasibility of targeted medical assessments for the prescribed cancers for serving firefighters.

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13 Peter Hanks QC, *Safety, Rehabilitation and Compensation Act Review Report*, February 2013, p158. Available at: http://docs.employment.gov.au/node/31849

14 See written submissions of the UFUA at p7.

Recommendation 3

I recommend that Comcare and relevant employers, with input from the relevant unions, jointly develop education programs to improve the awareness of the firefighter provisions.

Recommendation 4

I recommend that employers consider the feasibility of targeted medical assessments for the prescribed cancers for serving firefighters.

Cost implications of recommendations

2.42 There would be a cost implication in conducting regular medical tests that are not currently undertaken. However, I understand that firefighters for the ACT Government and Airservices Australia are already required to undergo regular medical and fitness examinations. The cost of including further specific tests within those examinations should not be significant.

2.43 Additionally, there would be a cost implication in jointly developing education programs to improve the awareness of the firefighter provisions in the SRC Act. I do not consider that this needs to be an excessive cost, and should be developed bearing in mind the number of firefighters in the jurisdiction, and other jurisdictional priorities.

Section Three: The Prescribed Cancers

Term of Reference 1

The review will enquire and report on:

- How effective and efficient the firefighter provisions have been in providing streamlined determination of claims made by those firefighters seeking compensation for the prescribed cancers and ***consideration of the appropriateness of the prescribed cancers***.

Section Two provides an overview of the cancers prescribed by the Firefighters' Act as well as an analysis of similar legislation that has been introduced in other jurisdictions and the current state of literature on the topic. Lung cancer in non-smokers (which is currently not on the list) is also discussed, as well as the interaction between the list of prescribed cancers and occupational diseases generally.

The prescribed cancers

3.1 The firefighter provisions apply to 12 diseases (all cancers) prescribed in s 7(8) of the SRC Act (the **prescribed cancers**). The prescribed cancers and the relevant qualifying periods are:

Cancer	**Qualifying Period**
Primary site brain cancer	5 years
Primary site bladder cancer	15 years
Primary site kidney cancer	15 years
Primary non-Hodgkins lymphoma	15 years
Primary leukemia	5 years
Primary site breast cancer	10 years
Primary site testicular cancer	10 years
Multiple myeloma	15 years
Primary site prostate cancer	15 years
Primary site ureter cancer	15 years
Primary site colorectal cancer	15 years
Primary site oesophageal cancer	25 years

3.2 As noted at [1.9] above, the firefighter provisions also allow for other cancers to be prescribed however no additional cancers have been prescribed to date.

3.3 When the Bill was first introduced in July 2011, it included coverage for seven primary site cancers. However, following the Committee's recommendation that the list of prescribed cancers be expanded to include those also included in legislation in Canada and the United States[15] (some of which had been in place for nearly a decade at that time), the Bill was amended to include the 12 prescribed cancers.

3.4 The Committee noted that the science determining the link between cancer and firefighting was pivotal to the consideration of the legislation.[16] There were a number of studies the Committee was informed of, including studies conducted of firefighters in Canada, the United States and New Zealand.[17]

3.5 Given the terms of reference, I do not propose to review the literature on which the decision was made to include the 12 prescribed cancers, but rather consider developments in the science and practice since the Firefighters' Act was enacted to determine whether the list should be maintained.

Legislative developments

3.6 Since the introduction of the Firefighters' Act, three states have enacted similar presumptive tests benefitting firefighters: Western Australia, Tasmania and South Australia.

3.7 In each of those states, the list of prescribed cancers is the same as in the firefighter provisions (including the relevant qualifying periods).[18] However there are some other differences.[19]

15 Recommendation 1 of the Committee, at [2.19] of the Committee's Report.

16 Committee's Report, p9 at [2.1].

17 Committee's Report, p9 at [2.3], p10 at [2.5] – [2.7].

18 See: s 31 and Sch 2A of the *Workers Rehabilitation and Compensation Act 1986 (SA)*, ss 27 and 28, and Sch 5 of the *Workers Rehabilitation and Compensation Act 1988* (Tas) and s 49C and Sch 4A of the *Workers' Compensation and Injury Management Act 1981* (WA).

19 For example: in Western Australia the legislation does not apply to volunteer firefighters, but the employee must have been employed as a firefighter on the date of injury to qualify for compensation: s 49B of the *Workers' Compensation and Injury Management Act 1981* (WA). In Tasmania, the legislation applies to volunteer firefighters and there is an established sunset provision that the prescribed injury must occur while employed as a firefighter or within the 10 year period following employment. And, in addition to the qualifying period for the prescribed disease, firefighters must have had 150 "exposure events" in a five year period to be eligible to make a claim for compensation relating to brain cancer and leukemia and 150 "exposure events" in a ten year period to be eligible to make a claim for other cancers: ss 27 and 28 of the *Workers Rehabilitation and Compensation Act 1988* (Tas). In South Australia, the legislation applies to all firefighters employed by the South Australian Government or presumptively employed as a member of the South Australian Country Fire Service as a volunteer undertaking firefighting work in connection with that membership. However, volunteer firefighters must have been exposed to a fire hazard at least 175 times over a five year period to be eligible to make a claim for compensation: s 31 of the *Workers Rehabilitation and Compensation Act 1986* (SA).

Scientific developments

3.8 In October 2013, a study conducted by Robert Daniels and others[20] examining mortality patterns and cancer incidence in firefighters was published under the title: *Mortality and cancer incidence in a pooled cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950-2009)* (the **Mortality Study**).[21] The mortality study was commissioned by the National Institute for Occupational Safety and Health in the United States, and examined a pooled cohort of approximately 30,000 United States career firefighters.

3.9 The mortality study found that there is a general trend of increased cancers among firefighters when compared with the rest of the United States population, and concluded that:

> Our findings are consistent with previous studies and strengthen evidence of a relation between firefighters' occupational exposure and cancer.

3.10 The mortality study referred to the same research that the Committee referred to in its report.[22]

3.11 The mortality study also found that the incidence of mesothelioma increased in the later years of the study. Mesothelioma is not a prescribed cancer for the firefighter provisions but it is a deemed disease pursuant to s 7(1) of the SRC Act.[23]

3.12 There has been no change in the science on this topic since the Committee's Report that would support any change to the current list of prescribed cancers.

3.13 However, both the Department of Veterans' Affairs and the Department of Defence advised that a number of studies are currently being undertaken. Those studies are investigating occupational diseases for certain Australian Defence Force (**ADF**) personnel, including ADF firefighters. They are:

(a) A review of occupational health claims arising from firefighters who undertook training exercises at certain Royal Australian Air Force bases from the 1950s through to the 1980s.

(b) A medical-science literature review of the hazards and health risks that may be associated with firefighting in the ADF, by Dr Tee Guidotti.

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20 The authors of the report are: Robert D. Daniels, Travis L. Kubale, James H. Yiim, Matthew M. Dahm, Thomas R. Hales, Dalsu Baris, Shelia H. Zahm, James J. Beaumont, Kathleen M. Waters and Lynne E. Pinkerton.

21 Daniels RD, Kubale TL, Yiin JH et al, *Mortality and cancer incidence in a pooled cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950-2009)*, Occupational & Environmental Medicine, October 2013. Available at: www.oem.bmj.com/content/early/2013/10/14/oemed-2013-101662.full

22 Notably: LeMasters GK, Genaidy AM, Succop P, et al, *Cancer risk among firefighters: A review and meta-analysis of 32 studies*. *J Occup Environ Med* 2006. Available at: http://www.iaff.org/hs/PDF/Cancer%20Risk%20Among%20Firefighters%20-%20UC%20Study.pdf

23 The current notice is the *Safety, Rehabilitation and Compensation (Specified Diseases) Notice 2007 (1).*

(c) A national study being undertaken by Monash University into impact of fire-fighting on the health of civilian firefighters that will include members of the ADF.

(d) A "Jet Fuel Exposure Syndrome Study" being conducted by the Mater Medical Research Institute. The Department of Defence is co-operating in this study, which aims to determine whether there is a genetic basis for some of the health problems affecting aircraft maintenance workers.

3.14 Consideration should be given to reviewing the list of prescribed cancers and other conditions once those studies are available.

Stakeholder views

3.15 The UFUA submitted that the list of prescribed cancers is appropriate and should be maintained.[24] The ACT Government referred to the work being undertaken in relation to deemed diseases (discussed at [3.31]-[3.38] below) and suggested there may be scope for achieving the same aim via deeming diseases for firefighters, rather than having a separate presumptive test.

Discussion

3.16 Given the limited number of claims made under the firefighter provisions, there is no compelling evidence to support the inclusion of more cancers at this point in time. Similarly, there is no compelling evidence to support the removal of any of the prescribed cancers from the list. Nor has there been any major development in the literature on this topic that necessitates any change.

3.17 As the Committee decided in 2011, I am sufficiently convinced there is a link between firefighting and certain cancers, however in the confines of this Review, I believe it is untimely to recommend any changes to the current list of prescribed cancers.

3.18 Research into the occupational risks for firefighters is ongoing and careful observation should be made to ensure the firefighter provisions reflect best practice globally. The environments in which firefighters work are ever changing. And, as the materials to which firefighters are exposed change, so too does the availability of better protection, including better and more available breathing apparatus, personal protective clothing and general decontamination methods.

3.19 I recommend the Government undertake another review in five years' time to determine whether the list of prescribed cancers remains appropriate and supported by the science. That would also permit a more in depth study of the claims experience.

[24] Written submissions of the UFUA, p6.

Recommendation 5

I recommend the current list of prescribed cancers in the Firefighters' Act be maintained.

Recommendation 6

I recommend the Government conduct a further review of the firefighter provisions in five years, with an emphasis on developments in the relevant science, and to ensure that the provisions continue to streamline the determination of claims made by firefighters consistent with contemporary workers' compensation principles.

Cost implications of recommendations

3.20 Any legislative review has a cost impact. However, that cost would not (in my view) be significant. Given the claims experience to date there would be minimal data to consider. However, there should be a greater body of scientific evidence to consider which may require the input of appropriately qualified professionals.

Lung Cancer in non-smokers

3.21 The Committee recommended that the Bill be expanded to include primary site lung cancer in non-smokers.[25] However, lung cancer was the only cancer recommended by the Committee that was not included in the penultimate version of the Bill. The Committee noted that there were complexities with defining a "non-smoker" for the purposes of being eligible to claim compensation.

3.22 Jurisdictions that include lung cancer in presumptive legislation for firefighters have a range of approaches to defining "non-smoker".

3.23 In Canada, for example, the provinces and territories have adopted one of two tests that represent different approaches to tackling this issue. While recognising that all smoking is damaging to a person's health, the approaches seek to differentiate between different types of smoking behaviour and ensure that a person is not precluded from accessing presumptive legislation when that person's lung cancer is more likely to have been caused by their occupation than the consumption of tobacco products.

3.24 The provinces of New Brunswick and Alberta in Canada have both adopted a "standard non-smoking period" approach which limits the availability of presumptive legislation to firefighters who are non-smokers and have had a minimum of 15 years of regular exposure

[25] Committee's Report, pp 12-13.

to hazards at a fire scene.[26] A non-smoker is defined as an individual who has not smoked a tobacco product in the 10 years prior to the date of diagnosis of a primary site cancer.

3.25 The Manitoba legislation requires certain consecutive time periods that a worker must have been not smoking, depending on the quantity of tobacco smoked. For example, a worker who smokes less than seven cigarettes a day needs to be a non-smoker for six consecutive years whereas someone who smoked 40 or more cigarettes per day needs to be a non-smoker for 28 consecutive years. However, where a person has smoked less than a certain amount of tobacco, those periods do not apply. For that purpose, "non-smoker" is defined as:

> For the purpose of subsection 4(5.4) of the Act (additional requirement re lung cancer), where a worker has smoked, in the worker's lifetime,
>
> a) less than 365 cigarettes;
> b) less than 365 cigars;
> c) less than 365 pipes; or
> d) less than 365 cigarettes, cigars and pipes
>
> there is no minimum period of time for which a worker must have been a non-smoker immediately before the day of the accident.

Stakeholder Views

3.26 The UFUA noted that the Committee agreed with a proposal to include primary site lung-cancer in non-smokers in the list of prescribed cancers. However, the UFUA recommended further processes commence in order to agree on the definition of a non-smoker so as not to undermine the integrity of the current list. In its written submission, the UFUA stated:

> As there was an intention to include primary site lung cancer for non-smokers based on the acceptance of the scientific link processes should commence in order to agree on the definition of non-smoker.[27]

3.27 Airservices Australia did not comment specifically about lung-cancer, but noted two recent claims for compensation by firefighters with a respiratory and nervous system condition called sarcoidosis. Airservices Australia thought that claims experience might give rise to a need to consider other conditions in future. It was further noted that the chemical agents used by aviation firefighters are not the same as those used by metropolitan firefighters due to the nature of aviation fuelled fires.

Discussion

3.28 The issue of defining a non-smoker for the purposes of primary site lung cancer is a complex one. However, there are examples available of how it might be done.

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26 Regulation available at http://laws.gnb.ca/en/ShowPdf/cr/2009-72.pdf

27 Written submission of the UFUA, p6.

3.29 I note that lung cancer is currently listed as a deemed disease against which a claim for compensation can be made pursuant to s 7(1) of the SRC Act on the basis of exposure to asbestos. The schedule of deemed diseases does not limit the eligibility for compensation for lung cancer to non-smokers. However, the common law position is more complex.[28]

3.30 Assuming Recommendation 6 is adopted, I recommend that a term of reference of that review be to consider whether lung cancer in non-smokers should be included in the list of prescribed cancers. I strongly suggest that consideration of that issue begin well before the review is to be finalised.

Recommendation 7

I recommend that a term of reference of the recommended review of the firefighter provisions (**Recommendation 6**) be to consider whether lung cancer in non-smokers should be included in the list of prescribed cancers.

Occupational Diseases

3.31 Section 7(1)(b) of the SRC Act provides for the Minister to deem certain diseases as being related to employment of a specific kind. That is typically done by declaring employment which includes exposure to certain substances, and related diseases.

3.32 The Committee considered the operation of s 7(1) of the SRC Act and whether it provided adequate coverage for firefighters, but concluded that the required proof of exposure to a specific substance was too onerous, and therefore did not provide adequate coverage.[29]

3.33 The diseases in s 7(1) of the SRC Act are listed based on exposure to particular substances. For example, s 7(1) states that diseases caused by exposure to asbestos related products are covered by the SRC Act. However, the firefighter provisions specify particular cancers and require only exposure to "the hazards of a fire scene" rather than information about exposure to a particular substance.

3.34 Safe Work Australia is currently undertaking a project through a Temporary Advisory Group to create a national set of agreed deemed diseases which it is proposed will ultimately be promulgated across all jurisdictions. The Temporary Advisory Group is focussed on developing a revised list of scheduled (or deemed) diseases across all jurisdictions with a view to streamlining access to workers' compensation, improving fairness and clarity and reducing the likelihood of disputes.[30]

3.35 The project is being assisted by Dr Tim Driscoll and is anticipated to include guidance material for workplace safety regulators, including things such as average latency periods for

[28] See: *Amaca Pty Ltd v Ellis* [2010] HCA 5; (2010) 240 CLR 111.
[29] Committee's Report, pp 29-30 at [3.32]-[3.35].
[30] Information provided by Safe Work Australia.

diseases and occupational and non-occupational causes where applicable. Comcare believes that if a revised list, as proposed by Safe Work Australia is developed and endorsed for inclusion in the SRC Act, it would simplify the establishment of occupational disease causation for claimants exposed to chemicals and other hazards.

3.36 The project is in process and is expected to be completed in late 2014.

3.37 There is potential for a revised schedule of deemed diseases under s 7(1) of the SRC Act to provide presumptive coverage for the same cancers currently prescribed under s 7(8).

3.38 However, the UFUA noted that when diseases are only covered by regulation they can be as easily removed as they can be enacted. The UFUA would therefore prefer to retain the firefighter provisions to protect its members.[31]

[31] It should be noted that the Schedule of Deemed Diseases is a disallowable instrument (as defined by the *Legislative Instruments Act 2003* (Cth)), and is therefore subject to the requirements of s 42 of that Act.

Section Four: Issues with the operation of the firefighter provisions

Term of Reference 2

The review will enquire and report on:

- ***what (if any) issues have emerged in the operation of the firefighter provisions, including whether the date of manifestation should be maintained.***

Section Four discusses the issues that have emerged with the operation of the provisions, including the date of manifestation.

The date of manifestation

4.1 In order to rely on the presumptive test in the firefighter provisions, Sch 1, Item 3 of the Firefighters' Act provides that the relevant cancer must have been sustained on or after 4 July 2011 (the date of manifestation).

4.2 The *Revised Explanatory Memorandum for the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011*[32] states that:

> This item would clarify that these new provisions will apply to a disease 'sustained' – within the meaning of subsection 7(4) of the SRC Act – on or after 4 July 2011, the date that the Bill was introduced into the House of Representatives. This would mean that:
>
> a. a disease 'sustained' on or after 4 July 2011 would be covered, even if the qualifying period occurred before commencement;
>
> b. a disease 'sustained' prior to 4 July 2011 would not be covered by the new provisions; however the firefighter would still be able to lodge a claim and have it assessed against the current provisions of the SRC Act.

4.3 The date of manifestation was clearly chosen to ensure no disadvantage to firefighters whose cancer was diagnosed after the Bill was first introduced into the Parliament by reason of any delay in passing the Bill.

Stakeholder views

4.4 Stakeholders reported that they understood the need for a date of effect to apply to the firefighter provisions, and they generally supported the current date of manifestation being

[32] *Revised Explanatory Memorandum to the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011*, p5. Available at: www.comlaw.gov.au/Details/C2011B00122/Download

maintained. It was noted that, possibly due to the short period of operation, no issues have emerged which support an amendment at this point in time.[33]

4.5 Concerns were raised by premium payers about any retrospective application of the firefighter provisions if the date of manifestation was to change, principally in relation to unfunded claim costs which will result in an increase in premiums payable to Comcare. It was also observed by some stakeholders that in situations where claimants had not been employed as a firefighter for many years, the task of verifying the claim details could be more difficult. Historically there were less reliable records about service and exposure to particular substances.

4.6 The date of manifestation also highlights the interaction between the SRC Act and the *Military, Rehabilitation and Compensation Act 2004* (the **MRC Act**). Claims relating to ADF service after 1 July 2004 are determined in accordance with the MRC Act. The SRC Act (together with the *Veterans' Entitlement Act 1986*) covers injuries arising from Defence service before 1 July 2004.

4.7 As at 1 June 2012, there were approximately 104 Army and 211 Air Force personnel within the ADF who would satisfy the definition of firefighter in the firefighter provisions. The MRC Act does not currently have a presumptive test equivalent to that in the firefighter provisions. ADF firefighters, including former ADF firefighters, with a claim relating to a period of service on or after 1 July 2004, for a cancer prescribed in the firefighter provisions, must prove that that cancer falls within the terms of the relevant Statement of Principles referred to by the MRC Act. The Statements of Principles are developed by the Repatriation Medical Authority and list factors that cause certain medical conditions that could be related to military service.

4.8 If the date of manifestation was removed, ADF firefighters who were diagnosed with one or more of the prescribed cancers before that date, and who served as an ADF firefighter for the relevant qualifying period for that cancer prior to 1 July 2004[34] could seek compensation under the SRC Act and potentially rely on the firefighter provisions.

4.9 However, the Department of Veterans' Affairs (which determines claims for ADF personnel under the SRC Act and the MRC Act) advised that to date they were not aware of any claims that would have qualified for the presumption in the firefighter provisions had it been available to them.

4.10 The Department of Defence was concerned about the general inequity stemming from presumptive coverage under the SRC Act where the same provisions were not included in the MRC Act. The inconsistency between workers' compensation and military compensation provisions may be considered an anomaly, however the lack of an equivalent provision, and whether this should be considered an anomaly given the particular provisions currently available in the MRC Act is not within the scope of this review.

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33 See the written submission of the UFUA at p6.

34 The date the MRC Act commenced operation.

Discussion

4.11 As with any arbitrary rule, there will be individuals who will benefit and those who will not qualify. The date of manifestation resulted in firefighters whose cancer was diagnosed prior to 4 July 2011 having to use the existing legislative provisions under the SRC Act to prove that their disease was contributed to, to a substantial degree, by their employment.[35]

4.12 If the date of manifestation were removed, there would be unknown impacts on premiums and claims. Dependents of now deceased firefighters whose cancer was diagnosed prior to the date of manifestation would be able to rely on the firefighter provisions in seeking compensation. The material before the Committee suggested that many firefighters did not claim compensation because of perceived difficulties with the claims process and so the number of potential claimants (including their descendants) is very difficult to quantify.

4.13 It was suggested that there are other ways to potentially limit the liability arising from the prescribed cancers (other than by the date of manifestation), for example by applying it only to serving firefighters, or enacting a sunset clause on eligibility.[36] However, given the limited number of claims to date, it is very difficult to assess the benefits of either of those measures against the likely impact on firefighters.

4.14 It should be remembered that firefighters are still able to lodge a claim and have it assessed by Comcare against ss 7(1) and 5B of the SRC Act when they do not meet the eligibility requirements (including the date of manifestation) of the firefighter provisions.

Recommendation 8

I recommend the current date of manifestation be maintained.

Premium Costs

4.15 The Committee explored the extent of related premium increases. Based largely on the Canadian experience, the Committee formed the view that "there would be a negligible impact on the Commonwealth or ACT budget"[37].

4.16 In the revised explanatory memorandum circulated with the Bill, Comcare estimated that the financial impact of the firefighter provisions would be an additional $3.2 million per annum to workers' compensation costs under the SRC Act. In 2011 that represented a 1.1 %

35 See the definition of *disease* in s 5B of the SRC Act.

36 In Tasmania, for example, there is an established sunset provision that the prescribed injury must occur while employed as a firefighter or within the 10 year period following employment: s 27(1)(b) of the *Workers Rehabilitation and Compensation Act 1988* (Tas).

37 Committee's Report, p30.

increase in the premium pool for the Commonwealth and a 2.7 % increase in the premium pool for the ACT Government.[38]

4.17 In estimating the additional premiums payable by the ACT Government, Airservices Australia and the Department of Environment, Comcare relied on the rates of cancer incidence reported in the LeMasters study.[39]

4.18 Additional premiums were determined from a profile of the firefighter cohort covered by the SRC Act (based on the age and service periods of the cohort) and contemporary cancer incidence rates. Against that profile, the latest population incidence rates for the prescribed cancers, and loadings for firefighters cancer incidence based on LeMasters, were used to estimate claim frequency. Allowance for the varying impact of claims, across various age groups was guided by data from the Australian Institute of Health and Welfare data books, to derive an estimate for the costs arising from claims under the provisions.[40]

4.19 There was no additional premium charge in financial year 2011/2012, even though claims could have been made in relation to diseases diagnosed during that period.

4.20 For the 2012 / 2013 financial year, Comcare levied the following additional premiums against employers of firefighters:

Premium Payer	**Additional Premium: 2012 / 2013**
ACT Government	$1,426,000
Airservices Australia	$1,967,000
Department of Environment	$286,000

4.21 However, Comcare initially overestimated the required premium and in 2013 / 2014 refunded the following amounts:

Premium Payer	**Premium refund for 2012 / 2013**
ACT Government	$713,000
Airservices Australia	$983,000
Department of Environment	$143,000

38 *Revised Explanatory Memorandum to the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011*, p2.

39 LeMasters GK, Genaidy AM, Succop P, *et al*, Cancer risk among firefighters: A review and meta-analysis of 32 studies. *J Occup Environ Med* 2006.

40 Data supplied by Comcare.

4.22 The current premiums (for the financial year 2013/ 2014) are approximately:

Premium Payer	Premium for 2013 / 2014
ACT Government	$686,000
Airservices Australia	$906,000
Department of Environment	$132,000

4.23 The experience of the firefighter provisions has been consistent with the Committee's estimate. To date there have only been three claims accepted under the SRC Act which have been approved under the firefighter provisions. The total cost of those claims is just over $200,000 for the two year period since the provisions came into effect.

4.24 Because of the time frame since commencement of the firefighter provisions, and the number of claims to date, there is insufficient data to properly consider the financial impact of the Firefighters' Act. Clearly the real costs to date have been significantly below what was initially anticipated. That is consistent with the experience in overseas jurisdictions and the view formed by the Committee. Comcare believes that costs of claims will increase over time. That is a prudent view given the limited experience to date. However the experience to date should allay the concerns expressed when the Bill was introduced, that there would be an immediate and unreasonable increase in costs to employers.

Stakeholder views

4.25 The Department of Environment confirmed that it received a reduction in its premium this year, but the basis for the reduction was not clearly outlined or referenced. The Department of Environment noted that some explanation of the premium variation in the annual letter from Comcare would be of assistance.

Administrative costs of the legislation

4.26 Comcare incurred one-off establishment costs to facilitate handling claims under the firefighter provisions of approximately $26,000. The unique cost of initial liability investigations and determination for the claims received to date is less than $2,500. Ongoing administration costs are negligible.

4.27 Comcare also issued a Jurisdictictional Policy Advice in relation to the firefighter provisions: Jurisdictional Policy Advice No. 2012/01.[41]

[41] Available at: http://www.comcare.gov.au/Forms_and_Publications/publications/our_lists/jurisdictional_policy_advice/2012_-_jurisdictional_policy_advices/jpa_201201

Appendices

Appendix A: Abbreviations and Defined Terms

Bill	*Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011*
Committee	Senate Standing Legislation Committee on Education, Employment and Workplace Relations
Committee's Report	Education, Employment and Workplace Relations Committee, Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 [Provisions]
Firefighters' Act	*Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011*
Firefighter provisions	Sections 7(8) – 7(10) of the *Safety, Rehabilitation and Compensation Act 1988*
MRC Act	*Military Rehabilitation and Compensation Act 2004*
Prescribed cancers	The 12 cancers listed in s 7(8) of the *Safety, Rehabilitation and Compensation Act 1988*
SRC Act	*Safety, Rehabilitation and Compensation Act 1988*
UFUA	United Firefighters Union of Australia