

Review of the firefighter provisions of the Safety, Rehabilitation and Compensation Act 1988

Comcare Submission

Introduction

This is Comcare's submission to the Department of Jobs and Small Business's (the Department) Review of the firefighter provisions of the *Safety, Rehabilitation and Compensation Act 1988* (the review of the firefighter provisions).

Background to the submission

Comcare's role and reason for submission

Comcare manages workers' compensation claims under the SRC Act for Australian Government departments and agencies. This includes the management of claims covered by the firefighter provisions that were enacted on 4 July 2011.

A previous review of the firefighter provisions was undertaken by the Department in 2013 and Comcare participated in that review.

On 4 April 2019 the Department wrote to Comcare inviting the agency to make a submission to this further review of the firefighter provisions.

The firefighter provisions in the Comcare scheme and relevant claims information

In the Comcare scheme, the firefighter provisions apply to firefighters employed (past or present) by the ACT Government, Airservices Australia and the Department of the Environment and Energy. The firefighter provisions deem prescribed cancers to be a compensable disease (unless the contrary is established) where a firefighter meets certain criteria (a prescribed cancer is diagnosed and the required qualifying employment period is met).

Out of a total of 430 firefighter claims received by Comcare, there have been a total of 30 claims made for prescribed cancers since the commencement of the firefighter provisions on 4 July 2011 (based on date of injury). Of these, 29 were accepted.

One claim was not accepted under the firefighter provisions because the firefighter was not employed as a firefighter for the qualifying employment period for the prescribed cancer.

The number of claims by prescribed cancer and qualifying employment period are:

Disease	Qualifying period	Number of claims
Primary site brain cancer	5 years	0
Primary site bladder cancer	15 years	1
Primary site kidney cancer	15 years	0
Primary non-Hodgkins lymphoma	15 years	1

Disease	Qualifying period	Number of claims
Primary leukemia	5 years	0
Primary site breast cancer	10 years	1
Primary site testicular cancer	10 years	1
Multiple myeloma	15 years	3
Primary site prostate cancer	15 years	17
Primary site ureter cancer	15 years	0
Primary site colorectal cancer	15 years	4
Primary site oesophageal cancer	25 years	2 (one rejected)

23 claims were made by firefighters employed by Airservices Australia and seven by firefighters employed by ACT Government. Of those claims, five firefighters are now deceased. No claims have been made by firefighters employed by the Department of the Environment and Energy.

Comcare has managed other claims involving firefighters. Prescribed cancer claims make up seven percent of all firefighter claims lodged with Comcare since 4 July 2011 (based on date of injury).

DJSB review terms of reference and Comcare response

The first 4 terms of reference for the DJSB review are whether:

- *the qualifying periods for the current list of prescribed cancers should be reduced*
- *there are any further diseases that warrant inclusion in the list prescribed at subsection 7(8) of the SRC Act*
- *lung cancer in non-smokers should be included among the listed cancers and, if so, any appropriate qualifying conditions, and*
- *the presumption of liability for prescribed cancers should be expanded to include volunteer firefighters and, if so, any appropriate qualifying conditions.*

Noting the low number of claims received by Comcare, we make the following comments:

- Any changes to the qualifying periods, the inclusion of new diseases, including lung cancer in non-smokers, would need to be supported by evidence.
- Out of the other 400 firefighter claims, Comcare has received only four claims for cancers that were not considered under the prescribed firefighter provisions. All four claims were accepted (under the general liability provisions) and were for the following cancers:
 - lung cancer
 - skin cancer (two claims); and
 - kidney cancer (note: kidney cancer is one of the cancers listed in the firefighter provisions, but this claim did not meet all the requisite requirements for it to be considered under those provisions).
- In relation to whether or not liability for prescribed cancers should be expanded to include volunteer firefighters, we note that volunteer firefighters are currently covered under the general SRC Act provisions. Volunteer firefighters are declared employees under section 5(15) of the SRC Act. Comcare's claims data does not include details on whether a claim

made is from a volunteer firefighter so we are unable to identify whether we have received claims from volunteer firefighters.

The final term of reference relates to whether *'the determination process applied to claims by firefighters for the prescribed cancers continues to achieve the efficiencies intended by the Firefighters Act'*.

Comcare understands 'efficiencies' to mean improved and more timely decision making on these claims with a view to ensuring easier and quicker access to compensation for those affected.

Following the 2013 review of the firefighter provisions, Comcare has worked on streamlining its claims management procedures and has also worked with the relevant employers to improve determination timeframes. Comcare has developed publications that provide information for firefighters¹ and support claims managers in the application of the firefighter provisions².

Comcare provides the following additional information in relation to this term of reference:

Claims management process

When a workers' compensation claim is made, employees are required to complete a standard claim form. This includes firefighters making a claim under the firefighter provisions.

Where a claim is made by a firefighter (or their dependant or representative) for a prescribed cancer, it is flagged by Comcare's claim system and allocated to a senior claims manager to establish eligibility for compensation and other entitlements under the SRC Act. The focus is to assess liability for the claim as quickly as possible. To do this, information is required from both the employer and employee, including the employee's treating medical practitioners.

Information is sought from the employer to confirm:

- the employee was or is employed as a firefighter;
- the period of the employee's employment;
- whether firefighting duties are a substantial portion of the employee's duties; and
- whether the employee was exposed to the hazards of fire scene.

The medical information required is:

- a diagnosis of one of the prescribed cancers, confirming it is a primary site cancer. Primary cancer is the term used to describe the original, or first, tumour in the body. Secondary cancers, which may present at the specified sites, are not covered under the firefighter provisions; and
- the day the firefighter first sought medical treatment or was impaired or incapacitated for work as a result of the prescribed cancer. Whichever day happened first will be taken to be the date of injury.

In most cases supporting medical evidence from treating medical practitioners is lodged with the claim for compensation. Where it is not (or where additional medical information is required),

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https://www.comcare.gov.au/Forms_and_Publications/publications/services/fact_sheets/fact_sheets/information_for_firefighters_on_the_firefighters_act/information_for_firefighters_on_the_firefighters_act
2 https://www.comcare.gov.au/Forms_and_Publications/publications/jurisdictional_policy_advices/jurisdictional_policy_advice/2012_-_jurisdictional_policy_advices/jpa_201201

Comcare makes every effort to obtain this information quickly to establish if the firefighter provisions of the SRC Act apply. In such cases, there could be fairly lengthy delays in determining the claim as we are reliant on the medical providers providing a response in a timely manner.

Where a firefighter is no longer employed, Comcare will make all efforts to obtain employment information quickly, including using its powers³ to seek relevant information under the SRC Act.

If there are any actual or anticipated delays in processing a claim for compensation the firefighter (or their dependant or representative) and their employer is advised of the reasons for delay or likely delay and updated on a regular basis.

Where it is established that the firefighter provisions of the SRC Act do not apply, Comcare will then assess the claim for compensation by reference to the other (general) injury and disease provisions of the SRC Act.

The duration of the claims process

The average time taken by Comcare to determine a claim made by firefighters for a prescribed cancer was 49 days, with the shortest period being seven days between date of receipt and date of determination, and the longest being 169 days. Two claims took 154 and 169 days respectively to determine. Excluding these claims as outliers, the average time to determine all the other claims is 41 days. In comparison, the average time to determine all disease claims for the same period is 62 days. For all cancer claims only in the same period it is 119 days.

As indicated above, the time taken to determine the claim for compensation is dependent on the information lodged with the claim, and whether additional information is required before a determination can be made.

The dispute resolution process

One firefighter claim was accepted following a reconsideration process. The claim for prescribed cancer initially failed because Comcare deemed the date of injury to be before the commencement of the firefighter provisions. On review it was established that the prescribed cancer was contracted after the date of commencement and the claim for compensation was subsequently accepted.

It took 48 days to reconsider the determination (based on days between date of reconsideration request and date of reviewable decision). The initial determination determined the date of injury based on diagnostic tests that showed pre-cancer indicators. The review was delayed pending the receipt of further medical evidence to establish when the prescribed cancer was contracted.

No applications have been made to the Administrative Appeals Tribunal following a Comcare decision to determine a claim for compensation under the firefighter provisions.

Complaints

No complaints have been received by Comcare since the commencement of the firefighter provisions about the provisions or related matters.

Summary

Since the 2013 review of the firefighter provisions Comcare has worked on improving efficiencies in the claims management process by streamlining its procedures and working with the relevant employers to improve determination timeframes.

³ [Section 71 of the SRC Act provides Comcare with the power to obtain information from Departments and authorities.](#)

Comcare has also developed publications that provide information for firefighters and support claims managers in the application of the firefighter provisions.

Comcare's claims experience shows the average time taken to determine a claim made by firefighters (based on date of injury) is currently 49 days (down from 82 days at the time of the previous review in 2013).

Comcare however acknowledges that there are still opportunities for improvement, especially with regard to improving the timeframes for making determinations and reconsiderations under the SRC Act.