



COMCARE SCHEME GUIDANCE – DISEASE PROVISIONS RELATING TO FIREFIGHTERS

PURPOSE

To provide scheme guidance about the disease provisions for firefighters under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

BACKGROUND

The [Safety, Rehabilitation and Compensation Amendment \(Fair Protection for Firefighters\) Act 2011](#) (the 2011 amendments), which came into effect on 4 July 2011, simplified access to workers' compensation for those firefighters who qualified.

The 2011 amendments inserted new subsections 7(8), (9) and (10) into the SRC Act. These subsections operate to deem certain cancers to be a compensable disease (unless the contrary is established) where a firefighter was exposed to the hazards of a fire scene during a qualifying period of employment as a firefighter of 5 – 25 years, depending on the type of cancer.

The [Fair Work Legislation Amendment \(Secure Jobs, Better Pay\) Act 2022](#) (the 2022 amendments) broaden the presumptive liability firefighter provisions under the SRC Act to further improve workers' compensation outcomes for firefighters. The 2022 amendments commenced on 7 December 2022.

The 2022 amendments extend the firefighter provisions to:

- > cover members of the ACT Fire and Rescue Service within the meaning of the Emergencies Act 2004 of the Australian Capital Territory; and
- > persons taken to be employed by the Australian Capital Territory (ACT) by operation of a declaration made under subsection 5(15) of the SRC Act (volunteer firefighters).

The 2022 amendments amended section 7(8) of the SRC Act to reduce the qualifying period for oesophageal cancer from 25 years to 15 years in relation to primary site oesophageal cancer sustained by an employee on or after 4 July 2011.

The 2022 amendments also amended section 7(9) of the SRC Act to specify that an employee is taken to have been employed as a firefighter if firefighting or related duties made up a 'not insubstantial portion of their duties.' As part of extending coverage to ACT volunteer firefighters, the 2022 amendments introduced a power in the SRC Act for the ACT Government to establish an 'ACT firefighting advisory committee' to provide advice on determining whether firefighting or related duties have made up a 'not insubstantial' portion of the duties for ACT volunteer firefighters.

GUIDANCE

Threshold tests

To be entitled to presumptive coverage under subsection 7(8), firefighters need to meet the following threshold test. The firefighter must:

- suffer from a prescribed cancer;¹ and
- have been employed:
 - as a firefighter (where firefighting or related duties made up a not insubstantial portion of his or her duties)
 - 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.

It is not necessary for the firefighter to identify which fire scene was the contributing factor.

Prescribed cancers

Tables 1 and 2 below set out the prescribed cancers for the purposes of presumptive coverage for firefighters under subsection 7(8).

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	Primary site brain cancer	5 years
2	Primary site bladder cancer	15 years
3	Primary site kidney cancer	15 years
4	Primary non-Hodgkin's lymphoma	15 years
5	Primary leukaemia	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	15 years
13	A cancer of a kind prescribed for this table	The period prescribed for such a cancer

¹ In the case of a cancer covered by item 13 of the prescribed cancers table, satisfy the conditions (if any) for that cancer.

The [Safety, Rehabilitation and Compensation Amendments \(Prescribed Cancers\) Regulations 2022](#) instrument was made to expand the list of prescribed cancers under the Safety, Rehabilitation and Compensation Regulations 2019 (the Regulations).

For the purposes of item 13 in the table in subsection 7(8) of the SRC Act, table 2 below sets out additional types of cancer and qualifying periods prescribed by the Regulations with effect from 17 December 2022.

Table 2: Prescribed kinds of cancer

Item	Disease	Qualifying period
1	Primary site lung cancer	15 years
2	Primary site skin cancer	15 years
3	Primary site cervical cancer	10 years
4	Primary site ovarian cancer	10 years
5	Primary site penile cancer	15 years
6	Primary site pancreatic cancer	10 years
7	Primary site thyroid cancer	10 years
8	Malignant mesothelioma	15 years

Secondary cancers

Cancers present at the specified sites will not be covered by the firefighter provisions if they are found to be secondary – that is, they originated in and spread from another part of the body – even if the cancer then becomes present on one of the sites on the prescribed list.

Employed as a firefighter

The provisions only apply to persons employed as a firefighter by:

- the Commonwealth; or
- a Commonwealth authority; or
- a licensed corporation; or
- a person declared under section 5(6) of the SRC Act
- a member of the ACT Fire and Rescue Service, within the meaning of the Emergencies Act 2004 of the Australian Capital Territory; or
- a person who, via a declaration under subsection 5(15) of the SRC Act, is taken to have been employed as a firefighter during any period during which the employee was a member of the firefighting service.

Section 7(9)(a) also explains that employees are taken to be firefighters where the relevant authority is satisfied that firefighting or related duties made up a not insubstantial portion of their duties.

To ascertain whether a person is a firefighter for the purpose of applying the presumptive coverage provisions, it may be necessary to obtain a duty statement or similar information from the relevant employer (or any other relevant parties). This may help to determine whether firefighting or related duties formed a not insubstantial portion of the claimant's duties during the relevant qualifying period.

The ACT can establish an 'ACT firefighting advisory committee' to assist in the determination of whether firefighting or related duties have made up a not insubstantial portion of the duties for ACT firefighters covered by the SRC Act.

Coverage under the provisions extends to current employees and retired firefighters whose qualifying period of service occurred, or started, before the commencement of the provisions.

Qualifying period

An employee must be employed as a firefighter, before the cancer was sustained, for the relevant qualifying period as outlined in Table 1.

Cumulative periods of service can be added together to satisfy the prescribed qualifying period. That means, 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.

Example: A person was employed as a firefighter for 5 years. That person then undertook non-firefighter related duties/employment for an additional two years before returning to employment as a firefighter for another 5 years. Although the person did not work consecutively as a firefighter over that period, their cumulative period of service as a firefighter is 10 years and they may satisfy the qualifying period for some cancers.

Date of application

The provisions apply to prescribed cancer claims with a date of injury on or after 4 July 2011. If a claim has a date of injury on or after 4 July 2011, the qualifying period can begin before the commencement of the provisions.

If the date of injury for a prescribed cancer is before 4 July 2011, the claim falls outside the scope of the provisions and it must be assessed against the other SRC Act disease provisions.

Deeming date of injury

As noted above, the date of injury affects whether the provisions apply. 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.

Other avenues of compensation

Section 7(10) makes it clear that firefighters who do not qualify for compensation under the provisions are not limited in their right to claim compensation assessed under the other liability provisions of the SRC Act.

For example, if the cancer claimed is not prescribed in section 7(8), or does not meet the relevant qualifying period, the decision-maker should proceed to consider occupational diseases in section 7(1), 7(2) and 7(3) of the SRC Act. In the event that coverage does not exist under section 7(1), 7(2) or 7(3), the decision maker must then turn their mind to the significant employment contribution test in section 5B of the SRC Act.

The exclusionary provisions in the SRC Act must also be considered, and if these apply, liability for compensation may be excluded.

FURTHER INFORMATION

For further information, please contact Comcare's Scheme Policy team on 1300 366 979 or email: schemepolicyanddesign@comcare.gov.au