SAFETY, REHABILITATION AND COMPENSATION AMENDMENT (FAIR PROTECTION FOR FIREFIGHTERS) BILL 2011

REVISED EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Tertiary Education, Skills, Jobs and Workplace Relations, Senator Chris Evans)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED
SAFETY, REHABILITATION AND COMPENSATION AMENDMENT
(FAIR PROTECTION FOR FIREFIGHTERS) BILL 2011

OUTLINE
The Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 (the Firefighters Bill) seeks to amend the Safety, Rehabilitation and Compensation Act 1988 (the SRC Act) to simplify workers’ compensation claims by firefighters who have contracted a range of prescribed cancers, and who have been employed for a certain period, by establishing a rebuttable presumption that the cancers are work-related.

Under this presumption, if a firefighter is diagnosed with one of the twelve cancers listed in the Bill, and has served as a firefighter for the relevant qualifying period, it will be presumed that the cancer is an occupational disease and is therefore compensable.

For each of the specified cancers, the Bill also includes a minimum length of service for which a firefighter must have been engaged in order to access workers’ compensation under the presumption. The specific cancer types and the associated minimum qualifying service periods are listed below.

<table>
<thead>
<tr>
<th>Cancer Type</th>
<th>Qualifying Period of Service</th>
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<tbody>
<tr>
<td>Primary site brain cancer</td>
<td>5 years</td>
</tr>
<tr>
<td>Primary site bladder cancer</td>
<td>15 years</td>
</tr>
<tr>
<td>Primary site kidney cancer</td>
<td>15 years</td>
</tr>
<tr>
<td>Primary non-Hodgkins lymphoma</td>
<td>15 years</td>
</tr>
<tr>
<td>Primary leukemia</td>
<td>5 years</td>
</tr>
<tr>
<td>Primary site breast cancer</td>
<td>10 years</td>
</tr>
<tr>
<td>Primary site testicular cancer</td>
<td>10 years</td>
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<tr>
<td>Multiple myeloma</td>
<td>15 years</td>
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<tr>
<td>Primary site prostate cancer</td>
<td>15 years</td>
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<tr>
<td>Primary site ureter cancer</td>
<td>15 years</td>
</tr>
<tr>
<td>Primary site colorectal cancer</td>
<td>15 years</td>
</tr>
<tr>
<td>Primary site oesophageal cancer</td>
<td>25 years</td>
</tr>
</tbody>
</table>

The presumption proposed by the Bill would be accessible only by firefighters that are covered by the SRC Act.
FINANCIAL IMPACT STATEMENT

Comcare estimates that it will add an extra $3.2 million per annum to the workers’ compensation claims costs. This represents a 1.1 per cent increase in the premium pool for the Commonwealth and a 2.7 per cent increase in the premium pool for the ACT Government.
NOTES ON CLAUSES

Clause 1-Short Title

This is a formal provision specifying the short title of the Act.

Clause 2-Commencement

This provides for the commencement of the Act. It provides that the Act will commence on the day after the Act receives the Royal Assent.

Clause 3-Schedule(s)

This clause provides for the effect of Schedule 1.
SCHEDULE 1 - AMENDMENTS

Safety, Rehabilitation and Compensation Act 1988

Item 1 - After subsection 7(7)

This item inserts provisions into the Safety, Rehabilitation and Compensation Act 1988 (SRC Act) relating to cancers contracted by firefighters.

A new subsection 7(8) provides that, should a firefighter sustain one of twelve primary site cancers after a specified number of years of being employed as a firefighter (with a different qualifying period for each cancer type as determined in the table), the employment is taken to have contributed to a significant degree to the contraction of the cancer, unless the contrary is established.

The creation of this legal presumption is designed to simplify access to workers’ compensation for those who qualify.

The new subsection 7(8) will also allow additional cancers and qualifying periods to be prescribed, and allow additional conditions to be prescribed for any new cancers that are prescribed.

A new subsection 7(9) provides that the firefighter must have been involved in firefighting duties as a substantial portion of his or her duties in order for subsection 7(8) to apply. It also allows firefighters who have been employed for two or more periods that add up to the qualifying period to have been taken to be employed for the qualifying period. Subsection 7(9) also makes clear that an employee is taken to have been employed as a firefighter only if he or she was employed by the Commonwealth, a Commonwealth authority or a licensed corporations, but that volunteer firefighters who are taken to be ‘employed’ for the purposes of the SRC Act by virtue of a Ministerial declaration made under subsection 5(15) of that Act are not covered by these provisions.

The fact that volunteers are excluded is a reflection of the current state of scientific knowledge. However, it may be that in the future bushfire firefighters (including volunteers) would want to present new evidence (should it emerge) including through the proposed legislative review (see item 2).

A new subsection 7(10) would make clear that the Bill does not limit an employee’s right to have their claim assessed under other provisions in the SRC Act. For example, subsection 7(1) of the SRC Act is a presumptive subsection also, and therefore it would be important that the rights of an employee who is taken to be employed as a firefighter are not curtailed by, for example, not being able to access the provisions in subsection 7(1).
Item 2 - Review of amendment

This amendment would require the Minister to have an independent review undertaken of the amendments made by Item 1, and for the review to be completed by 31 December 2013. The reviewer must give the Minister a written report and the report must be published on the Departmental website so that the public may access it.

Item 3 - Application

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 disease ‘sustained’ on or after 4 July 2011 would be covered, even if the qualifying period occurred before commencement;
• 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.