



Statutory Review of Firefighter Cancer Legislation

Report – April 2019

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Glossary of terms and abbreviations

Term/Abbreviation	Description
WCIMA	The <i>Workers Compensation and Injury Management Act 1981</i>
DFES	The Department of Fire and Emergency Services
DBCA	The Department of Biodiversity, Conservation and Attractions
UFUWA	United Firefighters Union of Western Australia

Executive summary

1. This report examines the operation and effectiveness of Division 4A of the WCIMA – *Injury: specified diseases contracted by firefighters* (the Firefighter Cancer Legislation).
2. The Firefighter Cancer Legislation provides a rebuttable presumption that any one of 12 specified cancers contracted by firefighters is work related. The legislation came into operation in 2013 and was amended in 2016 to broaden the scope of the provisions specifically to include retired firefighters and State Government firefighters employed other than by DFES (i.e. DBCA firefighters).
3. To date there has been 24 claims made under the Firefighter Cancer Legislation. Of those claims, only one firefighter wasn't able to progress with his presumptive claim due to not meeting the legislative requirements (not employed for the qualifying period). The average time for the insurer, RiskCover, to make a decision was 13 days. This can be compared to the average time of 43 days (across all workers' compensation insurers) to make a decision in relation to general disease claims.
4. Views and feedback on the operation and effectiveness of the Firefighter Cancer Legislation was sought from UFUWA, DFES, DBCA, and RiskCover.
5. The consensus from these organisation was overall satisfaction with the Firefighter Cancer Legislation. The UFUWA suggested the potential for expansion of the cancers covered by the legislation in the future and the possibility for more flexibility around the application of the employment qualifying periods. Both issues are addressed in the report.
6. The review indicates the legislation is operating as intended and is facilitating timely access to compensation for firefighters with cancer. No legislative amendments are recommended at this time.

Scope of review

7. On 13 November 2013, the *Workers' Compensation and Injury Management Amendment Act 2013* came into operation allowing workers under the Act, who are employed as firefighters, simplified access to compensation when they contract a specified cancer.
8. The amendments introduced a presumption of liability for 12 prescribed cancers suffered by firefighters who meet the qualifying requirements as contained in the WCIMA. The presumptions applied prospectively from the date the amendments came into operation (13 November 2013).
9. Section 49E of the WCIMA requires the Minister to carry out a review of the operation and effectiveness of the Firefighter Cancer Legislation as soon as practicable after every fifth anniversary of the day on which the 2013 Amendment Act came into operation.
10. The Minister must prepare a report based on the review and, as soon as practicable after the report is prepared, cause it to be laid before each House of Parliament.
11. In January 2019 the Minister for Industrial Relations requested WorkCover WA to undertake the review and produce the report.
12. The review assesses whether the amendments are operating as intended and are effective in facilitating claims and timely access to compensation. The review considers:
 - Statistical information on the number of claims made by firefighters and prevalence of cancer type(s)
 - Claim management and liability determination timeframes
 - Application of the qualifying periods and eligibility criteria
 - Feedback from relevant stakeholders.
13. During the course of the review, WorkCover WA representatives met with the following key stakeholders:
 - United Firefighters Union, WA Branch
 - RiskCover
 - Department of Fire and Emergency Services
 - Department of Biodiversity, Conservation and Attractions
14. WorkCover WA wishes to acknowledge and thank the above organisations for their time and contribution to the review.

The 2013 and 2016 amendments

15. The 2013 Amendment Act is the enabling legislation for the firefighter provisions. Further amendments were made in 2016 that extended coverage to DBCA firefighters and facilitated access to retired firefighters who otherwise meet the qualifying periods.
16. As of April 2019, the Firefighter Cancer Legislation has the potential to apply to around 1,500 employed firefighters, consisting of:
 - 1,125 career Fire and Rescue Service firefighters (DFES);¹
 - 288 Firefighters employed by DBCA.²
17. The scheme also covers an unknown number of retired firefighters from both DFES and DBCA.

The 2013 Amendment Act

18. The 2013 Amendment Act inserted Division 4A into the WCIMA. This Division applied to firefighters who were members or officers of a permanent fire brigade established under the *Fire Brigades Act 1942* and for whom firefighting duties made up a substantial portion of the worker's duties. The 2013 Amendment Act also required the firefighter to be employed as a firefighter at the time of the injury.
19. Section 49C of the 2013 Amendment Act set out the presumptive test for liability. If a firefighter was employed for at least the relevant qualifying period for the specified cancer, and during the firefighter's employment was exposed to the hazards of a fire scene, then the firefighter's employment was taken to have contributed, to a significant degree, to the specified cancer. As a consequence, the injury is considered work related.
20. The legislation provides for a rebuttable presumption in favour of firefighters and shifts the burden of proof regarding the cause of the cancer from the cancer sufferer to their employer and the employer's insurer. It is still open to the employer or insurer to rebut the presumption if it can be shown by them that the firefighter contracted the cancer other than through firefighting.
21. Table 1 identifies the twelve types of primary site cancer covered by the presumption and accompanying qualifying periods of service (set out in Schedule 4A of the WCIMA).

¹ Sourced from DFES website.

² Provided by DBCA.

Table 1

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	15 years
12	Primary site oesophageal cancer	25 years
13	A cancer of a kind prescribed by the regulations for the purposes of this Schedule	The period prescribed by the regulations for such a cancer

22. No additional cancer types have been added to the list since the 2013 Amendment Act became operational.
23. The legislation takes into account a firefighter's intermittent employment by allowing for an aggregate of employment equal to or exceeding the qualifying period for a specified cancer.
24. Sections 49B and 49C(3)(a) of the Act required that the firefighter be an officer or a member of a permanent fire brigade established under the *Fire Brigades Act 1942*. This meant that the 2013 Amendment Act only applied to firefighters employed by DFES.
25. The 2013 Amendment Act applied to cancer contracted on or after the date the 2013 Amendment Act came into operation, that is, 13 November 2013.

The 2016 Amendment Act

26. The 2016 Amendment Act introduced amendments to Division 4A of the WCIMA and applied to specified cancers sustained on or after 22 September 2016.
27. Section 49A of the WCIMA was amended to expand the definition of 'firefighting employment'.

28. The term 'firefighting employment' means employment by or under the Crown in right of the State, a substantial part of the duties of which consists of firefighting duties, which -
- is covered by an industrial award or industrial agreement applicable to firefighting; or
 - is prescribed to be firefighting employment for the purposes of the Act.
29. This generally applies to firefighters employed by DFES as well as firefighters employed by DBCA.
30. Amendments to Section 49A and 49C of the WCIMA meant that DBCA firefighters must attend at least five 'hazardous fires' (defined below) a year over five years in order to be eligible for the rebuttable presumption. DFES firefighters are considered to already meet these requirements.
31. The 2016 Amendment Act also removed the requirement for firefighters to have been employed in firefighting at the date of the injury. Now at the time of the injury the claimant can be either currently, or previously employed as a firefighter, thus opening up the rebuttable presumption to retired firefighters.

Current application of the provisions

32. In light of the 2013 Amendment Act and the 2016 Amendment Act, if the following conditions are met the cancer is taken to have arisen from employment as a firefighter, unless the employer proves the contrary:
- 1) One of the 12 cancers is contracted.
 - 2) As at the date of injury the worker is or has been in 'firefighting employment' (defined above) for a period of, or periods in aggregate amounting to at least, the qualifying period for the applicable cancer (qualifying periods range from 5 to 25 years).
 - 3) The worker has been exposed to the hazards of a fire scene on the basis of the employer being satisfied that the worker has completed one or more periods of 'hazardous firefighting employment' for at least the lesser of —
 - a) 5 years; and
 - b) the qualifying period.
33. Firefighters employed as members or officers of a permanent fire brigade as defined in the *Fire Brigades Act 1942* are taken to have completed the periods of 'hazardous firefighting employment' whilst employed as a permanent officer or member (e.g. firefighters employed by DFES).
34. Other State employed firefighters (e.g. employed by DBCA) are taken to have completed the period(s) of 'hazardous firefighting employment' if the worker has attended at least five 'hazardous fires' per year averaged over five years or the qualifying period (whichever is lesser).

35. A 'hazardous fire' means —
- a) a fire in a building; or
 - b) a fire in a vehicle, whether designed to move under its own power or to be towed and whether or not still moveable; or
 - c) a fire involving non-organic refuse or rubbish created by humans; or
 - d) a fire that is prescribed to be a hazardous fire.

Effectiveness of the firefighter provisions

36. This section examines the extent to which the legislative amendments facilitate access to compensation for firefighters with prescribed cancers, having regard to:
- Statistical information on the number of claims made by firefighters and prevalence of cancer type(s)
 - Claim management and liability determination timeframes
 - Application of the qualifying periods and eligibility criteria
 - Feedback from relevant stakeholders.

Claim profile

37. An overview of claims is summarised in Table 2.

Table 2

Number of claims	24
DFES claims	23
DBCA claims	1
Claims accepted	23
Claims rejected	1
Average time to determine claim	13 days
Average age of claimant (at date of injury)	69 years old
Retired claimants (at date of claim lodgement)	14
Currently employed claimants (at date of claim lodgement)	10

Overall assessment of claims and timeliness

38. In terms of facilitating access to compensation, there has been a total of **24** presumptive cancer claims made by firefighters in the five years since the legislation became operational. Only one claimant wasn't able to progress with his presumptive claim due to not meeting the legislative requirements.
39. In terms of timely access to compensation the average time taken to determine a claim is **13** days. The average time taken for an insurer to determine disease claims across the scheme, over the past five years, is 43 days. It should be noted that disease claims generally take longer to determine as there are medical and factual issues to investigate and resolve before a decision on liability can be made. This indicates that the legislation is working as intended and the timeframes for a decision are significantly shorter than they otherwise would be.

40. In managing claims from firefighters RiskCover, as the insurer, works closely with DFES and DBCA to progress claims quickly. This includes checking periods of employment, whether the firefighters meet the 'substantial duties' test and application of the 'hazardous fires' test (only applicable to DBCA firefighters).
41. The UFUWA, as at April 2019, represents approximately 1,250 members in Western Australia, including both Government and private sector firefighters.
42. UFUWA were active in seeking Government support for presumptive legislation in 2013 and extending the legislation to retired firefighters in 2016. The UFUWA is generally pleased with the operation and effectiveness of the legislation as it has allowed its members to receive treatment and compensation support, rather than worry about financial concerns when they have contracted cancer.
43. The UFUWA raised an issue with the application of the qualifying periods to firefighters that narrowly fall short of the required years of service. The UFUWA also raised the potential inclusion of additional cancers as more scientific evidence comes to light. These two specific issues are considered below.

The prescribed cancers

44. The 12 prescribed cancers are consistent with all other Australian jurisdictions that have comparable legislation.
45. In WA, only six of the 12 specified cancers have been claimed for since commencement of the legislation. Prostate cancer makes up the majority of claims (14 of 24), followed by bladder cancer (4) and kidney cancer (3). Breast cancer, colorectal cancer and myeloma have one claim each.
46. The UFUWA noted many Canadian provinces include additional cancers, such as melanoma, thyroid cancer and lung cancer in their presumptive legislation. The UFUWA also noted the lack of valid peer reviewed epidemiological studies in relation to diseases contracted by female firefighters, for instance ovarian cancer, largely due to the small number of female firefighters generally.
47. No other Australian jurisdiction covers melanoma, thyroid or lung cancer as a presumptive disease, and no other cancers have been added to the original 12 enacted in other states and territories. At this stage there is not sufficient epidemiological evidence for inclusion of melanoma, thyroid cancer or lung cancer.
48. There is flexibility in the legislation for additional cancer types and qualifying periods to be prescribed, for example, if appropriate epidemiological evidence emerges in the future. The UFUWA indicated if evidence comes to light they will approach the Minister for consideration of regulatory changes to update the list of presumptive cancers.
49. It would be appropriate to rely on any findings of the International Agency for Research on Cancer (IARC) in relation to the introduction of additional cancer types in the future. IARC is the specialised cancer agency of the World Health Organisation which produces independent research on cancer which can be used to develop effective and scientifically valid policies for cancer control.

50. The UFUWA also raised the potential inclusion of post-traumatic stress injuries as a presumptive disease for firefighters. While there is flexibility to add cancers via changes to the regulations, the legislation does not permit the inclusion of any other type of disease. However, the Government is drafting a new workers' compensation statute which will provide flexibility for inclusion of other presumptive diseases and occupations if there is sufficient evidence of the need to do so in the future.

Qualifying periods

51. The employment qualifying periods vary by cancer type (5 to 25 years – see Table 1). The qualifying period corresponding with each cancer type is also consistent across states and territories that have presumptive legislation.
52. The 2016 amendments removed the requirement for firefighters to be employed at the time of cancer diagnosis or injury. This has facilitated claims from retired firefighters who otherwise meet the employment qualifying periods for the relevant cancer. The significance of this change is reflected in the claims data: retired firefighters now make up the majority of claimants, 14 out of 24.
53. The average number of years employed as a firefighter for claimants suffering one of the 12 specified cancers is approximately 41 years. This indicates that the average claimant has been employed for significantly longer than even the longest qualifying period (25 years for oesophageal cancer).
54. The UFUWA mentioned the case of a member who fell short of the qualifying period for a specified cancer by 18 months and thus could not make a presumptive claim. UFUWA suggested some flexibility around qualifying periods for firefighters who just miss the cut-off for years employed.
55. It is unfortunate if a firefighter falls slightly short of the qualifying period. The difficulty with applying flexibility to the qualifying periods is that it departs from the legislative criteria and relies on subjective judgements about which claimants or period of service should be accepted.
56. The qualifying periods relate back to the studies about the association between cancer(s) and the accumulated exposure to carcinogens undertaking firefighting activities over a specified period of time. Changes to the qualifying periods should also only be made if there is sufficient epidemiological evidence.
57. It is important to note that failing to meet the qualifying period does not preclude a firefighter from making a claim for workers' compensation in the normal manner. It would be up to a worker in these circumstances to show that firefighting contributed to a significant degree to the cancer.

Application to DBCA firefighters

58. The DBCA is responsible for managing fires in forests, parks, nature reserves and other lands and employs approximately 288 firefighting employees.
59. DBCA firefighters were not covered by the 2013 amendments but were included via the 2016 amendments.

60. There is an additional requirement in the legislation for DBCA Firefighters to attend five hazardous fires per year over five years (similar to the comparable test for volunteer firefighters covered under a separate scheme). DBCA advise that most DBCA firefighters would attend more than this minimum threshold, having attended a total of 688 bushfires in 2017-18.
61. However DBCA noted that DBCA firefighters generally do not serve for periods comparable to DFES firefighters, and the qualifying periods for each specified cancer would limit access to a large portion of their firefighters.
62. Only one of the 24 claims to date has come from a DBCA firefighter.

Importance of prevention, health screening and active injury management

63. The presumptive laws provide a framework for facilitating access to compensation. The UFUWA also emphasised the importance of a strong focus on prevention of injury and disease, early diagnosis of potential cancers and changes in culture around firefighter safety and firefighting. UFUWA stated that the experience of various Canadian Provinces and Territories shows that changes in culture and early intervention allows specified cancers to be identified early and leads to more successful treatment options.
64. One Canadian program the UFUWA drew particular attention to is the 'Edmonton Model', which entails annual comprehensive medical assessments of firefighters on a voluntary basis where de-identified data is returned to the fire agency. Edmonton Fire Brigade reported high take-up of screening and early identification of occupational cancers (and other diseases). This has led to more effective clinical treatment and successful medical outcomes.
65. It highlights the importance of UFUWA, DFES and RiskCover working together to provide the best outcome for injured firefighters.

Conclusion

66. It is encouraging the Firefighter Cancer Legislation is operating as intended. The provisions have enabled claims to be progressed quickly without the need, delay and expense of obtaining medical reports about the cause of the cancer(s). When claims are made, RiskCover is able to make decisions quickly. There is a significant difference in the average time for assessing and making liability decision between presumptive and non-presumptive disease claims.
67. While there is currently not sufficient evidence to support the inclusion of additional cancers within the operation of the presumptive laws, the legislation already has flexibility for inclusion in the future if there is sufficient epidemiological justification.
68. No legislative amendments are recommended to the presumptive legislation at this time.