



VOLUNTEER FIRE BRIGADES VICTORIA

News Note

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PRESUMPTIVE LEGISLATION SHOULD TREAT ALL FIREFIGHTERS EQUALLY

Volunteer and career firefighters attend the same types of incidents, are exposed to the same toxins and breathe the same smoke. They should be treated equally. The process for a sick firefighter to apply for support should be fair, simple and compassionate.

Presumptive legislation is long overdue – and all Victorian firefighters should have equal protection under the law. The proposed legislation should be changed to provide equal protection to volunteers.

What is presumptive legislation?

Firefighters are exposed to toxic substances in the course of their work. Toxins can be inhaled or absorbed through the skin. Obvious hazards include toxic waste sites and industrial premises, but carcinogens can also be present as a result of substances in residential fires, Hazmat incidents, motor vehicle fires, and even bushfires to name just a few.

International research, including Australian studies commissioned by the Australasian Fire and Emergency Service Authorities Council (AFAC) to carry out a national retrospective study of firefighters' mortality and cancer incidence have linked 12 specific cancers identified as being directly related to firefighting activities:

Disease	Qualifying Period	Disease	Qualifying Period
Primary site brain cancer	5 yrs	Primary site bladder cancer	15 yrs
Primary site kidney cancer	15 yrs	Primary non-Hodgkins lymphoma	15 yrs
Primary leukemia	5 yrs	Primary site breast cancer	10 yrs
Primary site testicular cancer	10 yrs	Mutiple myeloma	15 yrs
Primary site prostate cancer	15 yrs	Primary site ureter cancer	15 yrs
Primary site colorectal cancer	15 yrs	Primary site oesophageal cancer	25 yrs

Presumptive legislation for firefighters reverses the onus of proof that applies in other compensation schemes. This means the cancer will be presumed to be firefighter related and the sick firefighter will have quick access to support and compensation to cover medical expenses unless Workcover or the insurer can prove the cancer was caused by some other factor.

Current Victorian law presents the sick firefighter with the nearly impossible task of showing evidence of fires or incidents they attended and prove on the balance of probabilities which incidents or which toxic exposures caused the cancer. If a firefighter broke a leg at a fire incident, they would be covered immediately, yet when a firefighter is exposed to a carcinogen and falls ill some year to 25 years later – they face a battle with the State and insurers of David and Goliath proportions just to get a fair go.

Victoria is the only State in Australia not to have Presumptive Legislation in place for firefighters

Victoria is currently the only state in Australia without presumptive legislation for firefighters.

The proposed Fire Services Bill introduced by the Andrews' Government last year and again in 2019 contains two very separate and distinct issues:

- 1) the restructure of the fire services to create Fire Rescue Victoria and
- 2) Presumptive Legislation.

It is VFBV's position that these two elements can and should be separate legislation. There are no dependencies between the two pieces of legislation – one does not rely on the other to operate.

Motions to separate the Bill and present Presumptive Legislation separately have been put up by several parties (including an independent) on at least three occasions in the last two years, but have not been supported by the Government.

Victorian Proposed Legislation Discriminates Against Volunteers

The core issue with the proposed legislation is that it disadvantages volunteers by requiring them to meet additional bureaucratic burdens and a higher standard of proof than career firefighters.

- **Volunteers must prove they've attended enough fires** to qualify as a firefighter for compensation, even though most other States have avoided incident thresholds as they are unreliable and not supported by evidence. A single exposure to a dangerous toxin can cause cancer. Staff do not need to prove how many fires they've attended (regardless of their role, e.g. working office duties).
- **There is no definition of what constitutes *enough* fires.** This leaves a subjective and unfair threshold that leaves the volunteer firefighter wondering if they will be covered or not – and at the whim of Worksafe and the 'advisory committee'.
- **The 'advisory committee' process is mandatory for all volunteer claims**, regardless of how experienced or exposed they may be, and how clear their case.
- **The advisory committee is not even required to tell the volunteer** why their claim was rejected or on what grounds.

Effectively, this advisory committee is reversing the intention of the legislation and is putting the onus of proving they qualify for compensation back onto the sick volunteer firefighter.

This adds time, stress and uncertainty to volunteer firefighters with no demonstrable benefit. The data to demonstrate a CFA volunteer's operational membership is readily available from CFA and recorded on the volunteer firefighter's membership records.

The legislation is not the same as the Queensland legislation

Claims that the Victorian legislation is the same as in Queensland, providing equal and fair treatment of paid and volunteer firefighters, are not correct.

In Queensland, an 'administrative committee' exists that is not legislated, nor mandatory, and it has been established to assist volunteers in that State gather the information and data they need to demonstrate they have served the relevant waiting periods, as QLD volunteer brigades have not in the past had accurate or centralised records of service.

In Queensland – this committee is only used to determine if the waiting period has been served - and applies to both staff and volunteers equally. It is only used in the absence of accurate records.

Further, the Queensland Committee is chaired by their Fire Services Commissioner and includes representatives from the volunteer association for volunteer claims and union representatives in the case of staff. To the best of our knowledge – this committee has never been used or needed.

The opinion of a legal firm that represents career and volunteer firefighters in Queensland, Victoria and nationwide, says:

“The fundamental difference between the Queensland and Victorian legislation is that Queensland legislation treats volunteer and career firefighters the same. The proposed Victorian legislation does not. For a Victorian volunteer firefighter to have their claim accepted, additional hurdles must be jumped over when compared to their career firefighter counterpart.”

[Ref: James Law submission Fire Services Select Committee 2017]

It is also important to note that the Queensland legislation has no sunset or cut off period, whereas the proposed Victorian legislation cuts off 10 years after the firefighter retires or resigns.

Victoria has Accurate Records

In Victoria, CFA has a centralised database that keeps an accurate record of a volunteer’s operational status – and records every change made to their status and when it changed. Brigades undergo an annual ‘Section 29’ inspection in which a range of data is validated and verified, including who are operational members. Therefore, there is no need for a legislated and mandatory committee process for CFA volunteers – the records already exist.

Criteria for membership to the Advisory Committee and case assessment is currently unclear, except that the committee will be direct appointments by the Government. There are currently no probity measures or governance in place to prevent politicisation of appointments. There are also no clear process and criteria to ensure a fair and equitable process and outcomes for volunteer firefighters who are victims of cancer.

Rob Gibbs’ Story

Robs heartbreaking story was broadcast this week on Channel Nine’s - *A Current Affair* on Tuesday 11th June.

Rob Gibbs was a CFA volunteer and father of one who went from a healthy, middle-aged man who never smoked and barely drank, to being diagnosed with a rare form of leukaemia.

Oncologist Stephen Vaughan found Rob’s exposure to chemicals, like benzene, during his work as a firefighter, was a contributing cause of Rob’s leukaemia. But when Rob went to the CFA in 2015 to ask for help paying for his medication, his claim was rejected.

In 2018, Rob was forced to take CFA to the Supreme Court for judicial relief.

Rob has been forced to rely on a “Firefighters Assessment Panel” established under current legislation that is very similar to what is proposed by the Governments Fire Services Reform Bill.

CFA describes this panel as: *“A Firefighters Assessment Panel has been formed to assist with the management and assessment of career and volunteer firefighter cancer related claims. The Firefighter Assessment panel is managed by Worksafe with the support of CFA and comprises expert medical, technical and claims specialists to ensure prompt, compassionate and fair assessments for all cancer related claims.”*

In Robs case before the Supreme Court, his lawyers described how he was let down by this panel and was provided no opportunity to respond to the panels deliberations or findings. It was further alleged the process used was biased in its determination against Rob.

Rob has spent years trying to navigate this process – all at a time he is the most vulnerable.

As Robs story demonstrates, volunteers have every reason to be concerned about the proposed arrangements in the current Bill before Parliament, that will require them to traverse a potentially similar process.

As the honourable Jack Rush QC summarised in his legal analysis of the Bill

“...no attempt has been made in the Bill or in the accompanying Explanatory Memorandum to explain why the operation of the presumption is made more difficult and arbitrary for volunteer firefighters. The legislation is entirely unsatisfactory and prejudicial to volunteer firefighters who may be diagnosed and wish to claim for a specified cancer. By comparison with a career firefighter diagnosed with and wishing to claim for precisely the same specified cancer the volunteer is required to proceed through an ill-defined and arbitrary process culminating in the Workcover Authority being able to reject the expert opinion of an advisory committee established by the Act. This leads to the remarkable outcome that a volunteer firefighter may attend exactly the same fires, be exposed to exactly the same toxins but only the career firefighter will have the advantage of the presumption and a straightforward route to compensation. For the volunteer the Bill is capricious and unfair.”

Priority changes advocated by VFBV

Based on our initial analysis of the Firefighters’ Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2019, the following changes could be made to the proposed legislation to remove the unfair and discriminatory treatment of volunteer firefighters:

Page	Section	Description
9	Division 3 – 9 (c)	<p>Remove highlighted section from 9 (c)</p> <p>(c) before the date on which the injury that is a disease referred to in column 1 of the Table in Schedule 1 occurred, the volunteer firefighter served as a firefighter for at least the qualifying period specified in column 2 of that Table opposite the disease, and the volunteer firefighter attended fires to the extent reasonably necessary to fulfil the purpose of their service as a firefighter—</p> <p>in the absence of proof to the contrary</p>
12	Division 3 - 12	<p>Remove section 12 completely. This section does not appear for career firefighters.</p> <p>12 Determination of whether section 9 requirement is met</p> <p>(1) For the purposes of determining whether a volunteer firefighter attended fires to the extent reasonably necessary to fulfil the purpose of their service as a firefighter under section 9, the Authority must seek an expert opinion from the advisory committee.</p> <p>(2) In providing the expert opinion to the Authority, the advisory committee must have regard to— (a) any relevant records, brigade records, CFA data, employer data and local knowledge; and (b) any other matter prescribed by the regulations.</p> <p>(3) The Authority— (a) must have regard to the expert opinion provided to the Authority under subsection (1); and (b) is not required to make a determination that is consistent with the expert opinion provided under subsection (1).</p>
18	20	<p>Remove 20 [2] (a)</p> <p>20 Establishment of advisory committee</p> <p>(1) The Minister must establish an advisory committee for the purposes of this Act in accordance with the regulations.</p> <p>(2) The purpose of the advisory committee is to provide an expert opinion to the Authority as to—</p> <p>(a) whether a volunteer firefighter has attended fires to the extent reasonably necessary to fulfil the purposes of service as a firefighter as required by section 9(1)(c); or</p> <p>(b) whether a firefighter has had an exceptional exposure event.</p>