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Research Director  
Finance and Administration Committee  
Parliament House  
George Street  
Brisbane Qld 4000

[fac@parliament.qld.gov.au](mailto:fac@parliament.qld.gov.au)

Dear Director

**SUBMISSION: Workers Compensation and Rehabilitation and Other Legislation Amendment Bill  
2015**

Please find attached a submission from Volunteer Fire Brigades Victoria (VFBV) on the subject of the above Bill, with particular reference to the policy objective, to *“provide greater certainty of entitlement and accessibility to compensation for firefighters by introducing deemed disease provisions for firefighters with prescribed diseases.”*

We are making this submission as part of our work towards achieving fairer and simpler cancer compensation arrangements for all firefighters, both paid and volunteer.

Should the Committee require additional information, I can be contacted on [REDACTED] during office hours, or at VFBV, PO Box 453, Mt Waverley Vic 3149, or [REDACTED]

Yours Sincerely,

[REDACTED]

Andrew Ford  
Chief Executive Officer  
Volunteer Fire Brigades Victoria



## **SUBMISSION**

to the Queensland Parliament's Finance and  
Administration Committee

# **Inquiry into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015**

by Volunteer Fire Brigades Victoria (VFBV)

6 August 2015

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## Introduction

1. Volunteer Fire Brigades Victoria (VFBV) represents Victoria's 60,000 CFA volunteers in their dealings with CFA, the State Government and Opposition, individual MPs and official inquiries, on everything from routine equipment and procedures to the future of the emergency services as a whole.
2. CFA Brigades protect 60% of suburban Melbourne, all regional cities and all of country Victoria every day and night of the year.
3. VFBV's Vision is; *Strong Volunteerism, Embraced to Build Community Resilience for a Safer Victoria.*
4. VFBV supports the introduction of presumptive cancer compensation legislation for paid and volunteer firefighters alike, to remove an unfair barrier that blocks sick firefighters from receiving the cancer compensation to which they are entitled. Paid and volunteer firefighters confront the same risks and exposures in performance of their firefighter duties.
5. This submission is based on practical experience with presumptive cancer compensation legislation for firefighters since it was first introduced by the Australian Parliament in 2011 and through the progressive introduction by State and Territory Parliaments since then.

## Executive Summary

6. VFBV supports the introduction of presumptive cancer compensation legislation that provides a fairer and simpler path to compensation for firefighters who contract typical firefighter cancers.
7. Interstate experience supports this; all States other than Victoria and NSW have moved to resolve the issue with presumptive legislation – Tasmania, South Australia, Western Australia and the Northern Territory have legislation in place, as does the Australian Government.
8. We call for presumptive legislation that lists the same 12 cancers and minimum lengths of service required to qualify as are standard under the laws adopted by the Commonwealth and most Australian States and Territories but without any additional eligibility hurdles that discriminate against volunteers.
9. Any failure to introduce presumptive legislation leaves sick firefighters facing an unfair barrier; the near impossible task of providing sufficient evidence to prove the cause of the cancer arose from particular fires, incidents or other work duties - events that might have happened 10, 15 or more years ago.

## Background

### THE HISTORY OF THE ISSUE

10. VFBV has been pursuing this issue since the Australian Parliament recognised the overwhelming scientific evidence from overseas jurisdictions (including Canada and the USA) and passed presumptive legislation for federally-employed firefighters in 2011.
11. Since then, most States and Territories have moved to resolve the problem with presumptive legislation.
  - **Tasmania** was first, although its legislation contained a flaw in the form of a discriminatory extra eligibility requirement, an arbitrarily chosen number of turnouts that only applied to volunteers. The Tasmanian legislation is subject to periodic review, and the Tasmanian Parliament has since reduced the number to 150.
  - **Western Australia** has introduced legislation covering its career firefighters and Cabinet has approved the drafting of the volunteer equivalent.
  - **South Australia** introduced presumptive legislation with a similar flaw to that which affects Tasmania's firefighters, but has since removed the volunteer-only requirement for an arbitrary turnouts threshold. South Australia's legislation now has the same eligibility requirements for both career and volunteer firefighters.
  - **The Northern Territory** has most recently passed presumptive legislation with the same discriminatory 150 turnout requirement as applies in Tasmania, but including attendance at fuel reduction burns as turnouts.

### EARLY PROJECTIONS OF COMPENSATION COSTS WERE WILDLY EXCESSIVE

12. Some Governments initially presented unsubstantiated and excessively high estimates of the forecast cost of presumptive legislation should it apply to volunteer firefighters. These were the product of the naturally cautious approach of public service advisers, methodology that does not stand the test of scrutiny and the fact that there was no actual experience with coverage of volunteers on which to draw.
13. The South Australian Government forecast it would cost the State \$90 million a year to cover all of its 14,000 volunteers. After just 12 months of actual experience, the figure dropped to between \$8 million and \$13.4 million a year over a decade.
14. The feared opening of the flood gates never happened – since 1 July 2013, South Australia has had just three volunteer claims under presumptive legislation.
15. At any rate, it is well established that personal injury costs for firefighters in carrying out their duties are part of the normal costs of doing business, and currently any costs being incurred or loss of income are borne by the sick firefighter. Relying on complex process to avoid claims and cut costs is unfair and unreasonable – the right to compensation is already there, it is simply too hard to access
16. The only excessive cost identified by VFBV's research would be the cost of recording every volunteer's attendances and exposures, should a number of turnouts be included as an eligibility requirement in any cancer compensation legislation.

## THE LEGISLATION THAT IS NEEDED

17. The presumptive legislation that has been introduced across most States and Territories works by reversing the onus of proof; the firefighter's cancer is presumed to be work related provided the firefighter has sufficient years of service, such that the causal exposure would have occurred within the time that the individual was a firefighter. The claim is rebuttable, it can still be rejected if it can be proven the cancer was not related to firefighting duties.
18. The legislation is not about a new entitlement, it is about removing an unfair barrier that blocks sick firefighters from receiving the cancer compensation to which they are entitled. The unfair barrier is the requirement that the firefighter establish a causal link on balance of probabilities between their cancer and specific exposures incurred during firefighting duties. This, of course, is all but impossible and leaves the firefighter unable to obtain the compensation to which they are entitled.
19. With the resources available to volunteer applicants, no volunteer could accurately prepare such a case. VFBV knows of at least one Victorian case where the intending volunteer applicant was too ill to complete details required by the application paper-work and therefore no claim was lodged.
20. The scientific evidence has already been accepted by the Australian Parliament and successive State Parliaments, that firefighters are more prone to certain cancers than are members of the public, but without presumptive legislation, firefighters face an unfair barrier; the near impossible task of providing sufficient evidence to prove on the balance of probabilities that the cause of the cancer arose from particular fires, incidents or other work duties - events that might have happened 10, 15 or more years ago.
21. Presumptive legislation must apply equally to career and volunteer firefighters because they work side by side and are exposed to the same hazards.

## Recommendations

22. That the Queensland Parliament;
  - Recognise the reality that smoke, toxins and other carcinogens to which firefighters are exposed do not discriminate and nor should the law; career and volunteer firefighters working side by side should receive the same support when they fall ill with cancer.
  - Take heed of the real world experience of South Australia, over the fanciful and ill-founded cost estimates that prevailed before practical experience with coverage of volunteers was available.
  - Recognise that this issue is about equity, fairness and proper support to people who serve the community in hazardous circumstances in its times of most urgent need.
  - Pass presumptive cancer compensation legislation that reverses the onus of proof, listing the same 12 cancers and minimum lengths of service required to qualify as are standard under the laws adopted by the Commonwealth and most Australian States and Territories while ensuring that career and volunteer firefighters are treated equally.

## CONCLUSION

23. Presumption allows the firefighter to concentrate on treatment and recovery, not a lengthy and expensive court case.
24. Volunteers don't get paid but they deserve proper access to support where it is needed.
25. Failing to compensate firefighters is making an unfair demand upon volunteers, making them and their families pay a heavy price for their generous, and often courageous, contribution to the community.
26. Career and volunteer firefighters do similar work and face the same exposures – they deserve the same protection.
27. Volunteers are particularly vulnerable, as they have no sick leave or superannuation to fall back on
28. The proposed extra requirement of 150 turnouts implies not that volunteers have lower exposure, but that they are somehow less likely to contract cancer because they are not paid.
29. We are asking for presumptive cancer compensation legislation that removes an unfair practical barrier that blocks sick firefighters from receiving compensation for work caused cancer, and applies equally to both paid and volunteer firefighters alike.

As additional information, please find attached an extract from *VFBV Notes for MPs – Firefighters Cancer Law*, as provided to all Victorian MPs in April 2014.

*Should the Committee require additional information or clarification of any of the above issues, please do not hesitate to contact Mr Andrew Ford, CEO, Volunteer Fire Brigades Victoria, on [REDACTED]*



# VOLUNTEER FIRE BRIGADES VICTORIA

## News Note

**NOTES FOR VICTORIAN MPs – 9 April 2014**

### **Presumptive legislation – the Firefighters’ Cancer Law**

Presumptive legislation is commonly referred to as the Firefighters’ Cancer Law - it is designed to provide a fairer and simpler path to compensation for volunteer and career firefighters who contract typical firefighter cancers.

Firefighters are not asking for new compensation, just the removal of an almost impossible barrier to accessing their existing entitlements.

#### **Why presumptive legislation is important**

Current Victorian compensation arrangements already provide for cancer compensation, but it is almost impossible to access because the firefighter has to show evidence of fires or incidents they attended that might be 10 or 15 years ago and prove on the balance of probabilities which incidents or which toxic exposures caused their cancer.

The proposed presumptive legislation would work by reversing the onus of proof – the firefighter’s cancer would be presumed to be work related provided the firefighter has sufficient years of service. A firefighter’s claim could still be rejected if it could be proven that the cancer was not related to firefighting duties.

Presumption allows the firefighter to concentrate on treatment and recovery, not a lengthy and expensive court case.

All firefighters must have confidence that there is commitment for the same protection regardless of pay status.

VFBV and the United Firefighters’ Union both strongly support presumptive legislation for volunteers and career firefighters alike.

#### **The evidence is there**

- Overseas evidence shows that firefighters are more exposed to certain risks and that exposure leads to higher incidences of cancer
- The link has been established and recognised by an Australian Senate inquiry



- The Australian Parliament passed presumptive legislation for Federally-employed firefighters in 2011, listing a number of cancers found to be more prevalent among firefighters.
- The passing of that legislation – the Fair Protection for Firefighters Bill – followed an inquiry by the Australian Senate’s Education, Employment and Workplace Relations Legislation Committee, which found there is ample overseas evidence connecting service as a firefighter with higher rates of certain types of cancer.
- Monash University health researchers now conducting further research in Australia have confirmed that view. In a letter to the Greens, researchers Associate Professor Deborah Glass and Professor Malcolm Sim wrote;

“...there is already good evidence from a very large number of previous human studies that work as a firefighter is associated with an increased risk of several types cancer. “

- Western Australia has begun the steps towards presumptive legislation for volunteers and career firefighters, and South Australia and Tasmania have already passed legislation.

### **The moral argument**

- This is a question of making it easier for firefighters to access their existing entitlement, not introducing any extra entitlement
- The liability to protect and compensate firefighters already exists but it is too hard to access because of the nature of the work and effects of that work over time
- The legal process for proving a causal relationship is complex, lengthy and expensive, requiring a firefighter who may be suffering cancer to invest considerable time and money to try to prove a causal link, at a time when they should be supported and focussed on treatment, recovery and comfort.
- The need for presumptive legislation is based on established scientific evidence and any claim is rebuttable, ensuring claims are well based and justified
- The current process is too complex for volunteers to access – this is morally unfair

### **The nature of firefighters’ work and service to the community**

- This is a firefighting specific reality and the risk is peculiar to firefighting - firefighting is an inherently dangerous job
- When others are moving away from the fire or in other emergency roles working at a greater distance from the exposures, firefighters are moving in – they have no choice, they must go in
- Firefighting is different from other work. Volunteer and career firefighters go into harm’s way as part of what they do
- In firefighting, there is an inherent level of risk that cannot be avoided, with consequences for firefighters that can, and often do, affect their health. Exposure to toxins that give rise to cancer is one of these
- The cost of providing this protection is part of the cost of doing business – it should not be seen as an optional extra
- Unlike a broken bone or an accident in other work places, a firefighting related cancer is very difficult to connect to the incident that caused it; the firefighter is still entitled to compensation but the burden of proof makes it close to impossible to obtain

### **The financial cost is part of doing business and a reasonable obligation in return for the firefighter's contribution, whether paid or volunteer**

- The cost of providing proper compensation for our front line people is part of the cost of providing an effective emergency service – it should not be seen as an optional extra.
- Relying on complex process to avoid claims and cut costs is unfair and unreasonable – the right to compensation is already there, it is simply too hard to access

### **Why this is important to volunteers**

- Volunteers don't get paid but they deserve proper access to support if it is needed
- Failing to compensate firefighters is making an unfair demand upon volunteers, making them and their families pay a heavy price for their generous, and often courageous, contribution to the community.
- This is compensation to which all firefighters are entitled – we owe them compensation for injuries incurred while protecting our community
- In Victoria, volunteers and career firefighters do similar work, fight the same fires, face the same exposures – they deserve the same protection
- Volunteers are particularly vulnerable if they fall ill, as they have no sick leave or superannuation to fall back on
- Volunteers need to be confident that they and their families will be supported if they fall ill
- The process needs to be simple and fair

### **Fears of a cost blowout are unfounded**

Other jurisdictions introducing presumptive legislation have not experienced a cost blow out – in 2011, the Australian Senate's Education, Employment and Workplace Relations Legislation Committee found it had;

"no reason to believe that the introduction of presumptive legislation here would lead to a flood of claims. Evidence suggests otherwise, as only a small number of firefighters will be in the unfortunate position of having to make a claim for occupational cancer."

### **No need to wait**

The Victorian Government has indicated that it is awaiting the completion of new research by Monash University before deciding on presumptive legislation. However, the Monash University team conducting that additional research has indicated the wait is unnecessary; they say sufficient evidence already exists and decisions should be made on the basis of available scientific evidence.

In a letter to the Greens, researchers Associate Professor Deborah Glass and Professor Malcolm Sim said;

"...there is already good evidence from a very large number of previous human studies that work as a firefighter is associated with an increased risk of several types cancer... ...waiting for more research findings, especially in this situation where the results of many cancer studies in firefighters are already available, will lead to unacceptable delays, possibly extending into years. "

### **We are happy for any or all of the parties to introduce the legislation**

The Greens introduced a Bill in the Victorian Upper House, from where it was referred to a committee on a constitutional question, then ran out of time before a vote could take place.

From a VFBV viewpoint the issue shouldn't be delayed. If Bill cannot be reintroduced in the Upper House, then it is up to Coalition or Labor MPs to either introduce or support presumptive legislation in the Lower House.

Since the idea of presumptive legislation was first raised, VFBV has worked to secure the support of all of the major parties for this important initiative, reflecting the all-party support the Federal legislation received in the Australian Parliament in 2011. To date there has been strong support from Greens and Labor MPs, but not Coalition MPs.

### **Why is it important enough for other jurisdictions and not Victoria?**

- Presumptive legislation has been in place for Federally-employed firefighters since 2011 – it passed through the Australian Parliament with the support of all of the major parties.
- In Victoria, that means Federally-employed firefighters at Melbourne Airport are covered by presumptive legislation, but the CFA and MFB firefighters working alongside them are not.

Ends...