



6 July 2017

Assistant Clerk Committees
Department of the Legislative Council
Fire Services Bill Select Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

EMAIL: LCSC@parliament.vic.gov.au

Dear Sir/Madam

**RE: INQUIRY INTO THE FIREFIGHTERS' PRESUMPTIVE RIGHTS COMPENSATION AND
FIRE SERVICES LEGISLATION AMENDMENT (REFORM) BILL 2017**

We write to provide submissions to the Fire Services Bill Select Committee in relation to the Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill (herein referred to as the proposed Victorian presumptive legislation). Our submissions are restricted to only those provisions in the Bill that relate to presumptive compensation rights of firefighters with a cancer diagnosis.

By way of a brief introduction, we are a personal injury compensation law firm specialising in firefighter cancer compensation. We represent firefighters and their families in all Australian Workers Compensation schemes and jurisdictions. We are the legal advisors for the Australian Branch of the International Firefighter Cancer Foundation (also known as the Firefighters Cancer Foundation Australia).

We currently represent a number of firefighters in the process of making claims and we are also assisting in the management of accepted claims for firefighters in both Queensland and Victoria. As such, we can offer a unique perspective to assist the Committee.

We propose to only highlight some of the more significant differences between both pieces of legislation as it is our understanding that the proposed Victorian presumptive legislation is meant to be similar, if not the same, in effect as the Queensland presumptive legislation.

As a law firm assisting firefighters with cancer in Queensland and in Victoria (claims with and without the benefit of presumptive legislation), our observation is that there are a number of differences between the proposed Victorian presumptive legislation and the Queensland presumptive legislation (located within the *Workers Compensation and Rehabilitation Act*). There are substantial entitlement or eligibility differences between career and volunteer firefighters under the Victorian model that simply do not exist in the Queensland presumptive legislation.

The fundamental difference between the Queensland presumptive legislation and the proposed Victorian presumptive legislation is that the Queensland presumptive legislation treats volunteer and career firefighters the same. The proposed Victorian presumptive legislation does not. For a Victorian volunteer firefighter to have their claim accepted, additional steps must be taken when compared to

their career firefighter counterpart. In Queensland, the test is the same irrespective of employment status.

Deemed Disease, Qualifying Period and Time Limitation

To be eligible under the proposed Victorian presumptive legislation, career or volunteer firefighters similarly must prove the following:

- (a) They have a cancer which is listed in the Schedule;
- (b) The date of diagnosis was on or after 1 June 2016 ;
- (c) The injury (cancer) was diagnosed during a period when they were employed or served as career or volunteer firefighter or within 10 years after ceasing to be a firefighter; and
- (d) They were, before the date of diagnosis, employed or served as a firefighter for at least the qualifying period listed in the Schedule.

This differs to the Queensland presumptive legislation, as there are no time limits on claims from retired or former firefighters. The time limitation placed on Victorian firefighters is a significant departure from the Queensland model and it will result in a number of firefighters (career and volunteer) who receive a cancer diagnosis more than a decade after they ceased firefighting, to then not be eligible to access presumptive compensation. The Queensland presumptive legislation, which has no time limit, more adequately reflects the way in which cancers develop from carcinogenic exposures in the course of firefighting suppression and firefighting training.

The deemed diseases and qualifying periods are identical for both volunteer and career firefighters under the Queensland presumptive legislation and the proposed Victorian presumptive legislation and are identical to other jurisdictions who have also legislated a presumption.

Qualifying Period

Under the proposed Victorian presumptive legislation and Queensland presumptive legislation, both career and volunteer firefighters are required to meet a qualifying period (number of years) which correlates with a particular cancer.

When deciding the number of years to meet the qualifying period, the Queensland presumptive legislation, for both career and volunteer firefighter, states:

- 36E(2) *A period of 12 months may be included only if, throughout the period, the person -*
- a) *Was employed for the purpose of firefighting; and*
 - b) *Attended fires to the extent reasonably necessary to fulfil the purpose of the person's employment.*

For volunteer firefighters, the proposed Victorian presumptive legislation states:

- s9(1)(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.***

The above applies to volunteer firefighters only and not to career firefighters.

The proposed Victorian presumptive legislation does not define what it means by “*attended fires to the extent reasonably necessary to fulfil the purpose of their service as a firefighter*” and this test is in addition to meeting the qualifying period (number of years).

The test for volunteers in the proposed Victorian presumptive legislation appears to be three tiered:

1. The volunteer must have a diagnosed cancer from the list;
2. They must establish the requisite number of years to meet the qualifying period associated with their diagnosed cancer; AND
3. They must establish that they have attended fires to the extent reasonably necessary to fulfil the purpose of their service as a firefighter (although there is no definition of what this means.)

The test for volunteer firefighters is more than the career firefighters' test.

For career firefighters, the proposed Victorian legislation states:

s7(1)(c) Before the date on which the injury that is a disease referred to in column 1 in schedule 1 occurred the worker is or was employed, or served as a firefighter, for at least the qualifying period specified in column 2 of that Table opposite the disease –

The career firefighter does not then have to go on and prove they have *“attended fires to the extent reasonably necessary to fulfil the purpose of their service as a firefighter”*.

As you can see, whilst the same wording or phrase is in the Queensland presumptive legislation, it serves a different purpose as it only applies to calculating the number of years to meet the qualifying period and it applies to both career and volunteer firefighters.

Advisory Committee

In the proposed Victorian presumptive legislation, there is a mandatory referral of all volunteer applications to an Advisory Committee, to be established under s20 of the proposed Victorian presumptive legislation. This committee is to provide an “expert opinion” about whether or not the volunteer has *“attended fires to the extent reasonably necessary to fulfil the purpose of their service as a firefighter”*. It appears that the Advisory Committee is not being asked to determine whether the volunteer has met the qualifying period (number of years), only whether or not they have *“attended fires to an extent reasonably necessary to fulfil the purpose of their service as a firefighter”*.

The mandatory referral to an Advisory Committee established by the proposed Victorian presumptive legislation leads us to believe that something more than service record or tenure will be used to determine whether a volunteer has attended at fires to *“an extent reasonably necessary to fulfil the purpose of their service as a firefighter”*.

The proposed Victorian presumptive legislation does not prescribe the nature of the expert opinion to be provided by the Advisory Committee. Nor does the proposed Victorian presumptive legislation indicate whether the expert opinion is to come from members sitting on the Advisory Committee or sourced elsewhere.

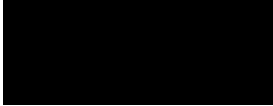
The Advisory Committee has another function, which is to decide whether a firefighter (career or volunteer) has had an “exceptional exposure event” under s 20(2)(b). Queensland legislation does not have provision for exceptional exposure events and we commend the Government for this inclusion.

Queensland does not have an Advisory Committee established under the presumptive legislation, to which all volunteer applications must be referred for “expert opinion”. Again, this is a significant difference between the Queensland presumptive legislation and the proposed Victorian presumptive legislation.

Queensland does have a Deemed Diseases Review Panel which is managed through the Office of Industrial Relations. If a claim were referred to this Panel by WorkCover Queensland to assist in deciding an application by any firefighter (career or volunteer), the Panel can only advise on “tenure”, that is the years of service. The Queensland presumptive legislation provisions commenced from 15 July 2015. The Deemed Diseases Review Panel has not been referred any claims by WorkCover Queensland to date.

We are available to respond to or comment on any questions the Committee may have in relation to this submission and any aspects of the occupation of firefighting, cancer and workers compensation.

Yours faithfully
James Law



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