

# **Accident Compensation Legislation (Fair Protection for Firefighters) Bill 2011**

## **Introduction Print**

### **EXPLANATORY MEMORANDUM**

#### **General**

The Bill amends the **Accident Compensation Act 1985**, the **Workers Compensation Act 1958** and the **Country Fire Authority Act 1958** to simplify compensation claims for disease suffered by career and volunteer firefighters exposed to the hazards of a fire scene due to the nature of firefighting.

#### **Clause Notes**

- Clause 1 sets out the main purpose of the Bill, which is to amend the **Accident Compensation Act 1985**, the **Workers Compensation Act 1958** and the **Country Fire Authority Act 1958** to simplify compensation claims by career and volunteer firefighters, by deeming certain prescribed cancers to be caused by their career or volunteer work.
- Clause 2 states that the Bill will come into operation on the day after the day on which it receives the Royal Assent.
- Clause 3 inserts a new section 86A in the **Accident Compensation Act 1985** ("the AC Act") which deems certain cancers suffered by workers who are firefighters to be due to the nature of firefighting.

New section 86A provides that, should a career 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

to new section 86A(1)), and for whom firefighting makes up a substantial portion of his or her duties, the disease is deemed to be due to the nature of the employment as a firefighter.

For each of the specified cancers, the table includes a minimum length of service for which a firefighter must have been engaged so that the worker does not have to prove that the cancer was caused by his or her employment as a firefighter. The qualifying period may be served in two or more periods pursuant to new section 86A(2)(b).

New section 86A(2)(a) provides that a worker is deemed to have been employed as a firefighter if firefighting duties made up a substantial portion of his or her duties.

New section 86A(3) provides for a new claim for compensation to be made under this section by a firefighter or his or her dependants if the firefighter is suffering, or has suffered, one of the primary site cancers listed under section 86A(1) in accordance with new section 86A, if his or her previous claim for compensation was rejected because they could not establish the disease was due to the nature of his or her employment.

New section 86A(4) provides that a firefighter is not entitled to make a new claim under new section 86A if the claimant has received compensation for a previous claim made under the AC Act in respect of a disease to which new section 86A applies.

New section 86A(5) provides specifically for Mr Brian Potter that if he or his dependants make a claim in respect of a disease he is suffering, or has suffered, and if that disease is one of the twelve primary site cancers listed in the table to new subsection 86A(1), the disease is deemed to be due to the nature of his employment.

Clause 4 inserts a new section 12AA in the **Workers Compensation Act 1958**.

New section 12AA(1), (2), (3) and (4) mostly replicates new section 86A of the AC Act (as inserted by clause 3) to allow workers who are firefighters seeking compensation under the **Workers Compensation Act 1958** to not have to prove that their employment caused their cancer if new section 12AA applies to the worker.

Clause 5 inserts a new Part VAA in the **Country Fire Authority Act 1958** ("CFA Act"), which deems certain cancers to be due to the nature of firefighting for volunteer officers and members of the Country Fire Authority ("CFA").

New section 66 sets out the purpose of Part VAA, which is to enable a volunteer officer or member of the CFA, who has performed service as a member within the meaning of the Country Fire Authority Regulations 2004 ("CFA Regulations") for a specified period, and who has been exposed to the hazards of a fire scene during the period he or she performed service as a member, and who suffers a specified cancer to be compensated without having to prove that the cancer was caused by performing service as a member.

New section 67 provides that the CFA Regulations apply as if they contained the provisions set out in new section 67.

New section 67(1)(a) provides for regulation 75 of the CFA Regulations to apply as if the definition of "disease" from section 5(1) of the AC Act were inserted.

New section 67(1)(b) provides for the CFA Regulations to apply as if a new regulation 76(3) were inserted, which provides that consideration must be given to section 86A of the AC Act (the deeming of certain diseases to be due to the nature of firefighting) for the purposes of determining the entitlement to compensation for a volunteer officer or member who is suffering, or has suffered, from one of the 12 cancers in the Table to section 86A(1) of the AC Act. This includes consideration of whether firefighting duties made up a substantial portion of his or her duties.

New section 67(1)(c) provides for regulation 82(2)(b) of the CFA Regulations to apply as if new section 86A were among the sections of the AC Act the Authority must consider when determining a claim for compensation.

New section 67(1)(d) provides for the CFA Regulations to apply as if a new regulation 82(3) were inserted, which deems members to have been performing service as a member if attending or participating in activities specified in the definition of service as a member made up a substantial portion of his or her duties. A member who performed service as a member for two or more periods that add up to the qualifying period is deemed to have been a member performing service as a member for the

qualifying period. Service as a member is to be taken to be employment as a firefighter for the purposes of consideration of section 86A of the AC Act pursuant to new regulation 76(3).

New section 67(2) provides for new Part VAA of the CFA Act to continue to operate if the CFA Regulations are substituted by new Regulations that have substantially the same effect. Thus if any new Regulations substituting the CFA Regulations are substantially the same in effect, any reference to the CFA Regulations in new Part VAA is to be construed as a reference to the new Regulations.

- Clause 6 provides for an independent review of the amendments made by Parts 2 and 3 of this Bill to be undertaken and completed by 31 December 2015. The person who undertakes the review must consider the review of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011 (Commonwealth), including the findings and any action taken following the commonwealth review.
- Clause 7 provides for the repeal of the Bill on 31 December 2016. The repeal of the Bill does not affect the continuing operation of the amendments made by the Bill (see section 15(1) of the **Interpretation of Legislation Act 1984**).

PARLIAMENT OF VICTORIA

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**Accident Compensation Legislation (Fair Protection  
for Firefighters) Bill 2011**

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PARLIAMENT OF VICTORIA

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Introduced in the Council by Ms Colleen Hartland

**Accident Compensation Legislation  
(Fair Protection for Firefighters) Bill  
2011**

A Bill for an Act to amend the **Accident Compensation Act 1985** in relation to compensation for disease due to employment suffered by firefighters and for other purposes.

**The Parliament of Victoria enacts:**

**PART 1—PRELIMINARY**

**1 Purpose**

The purpose of this Act is to amend—

- (a) the **Accident Compensation Act 1985** and the **Workers Compensation Act 1958** to simplify compensation claims by firefighters exposed to the hazards of a fire scene as part of their employment by deeming prescribed types of cancers to be due to the nature of that employment;

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Part 1—Preliminary

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5 (b) the **Country Fire Authority Act 1958** to  
simplify compensation claims made by  
volunteer officers or members exposed to the  
hazards of a fire scene due to voluntarily  
engaging in firefighting and participating in  
training exercises in order to engage in  
firefighting.

**2 Commencement**

10 This Act comes into operation on the day after the  
day on which this Act receives the Royal Assent.

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**PART 2—AMENDMENT OF ACCIDENT COMPENSATION  
ACT 1985 AND WORKERS COMPENSATION ACT 1958**

**3 New section 86A inserted in Accident Compensation  
Act 1985**

After section 86 of the **Accident Compensation  
Act 1985** insert—

**"86A Certain diseases deemed to be due to  
nature of firefighting**

(1) If a worker—

(a) suffers or suffered a disease—

(i) specified in column 2 of the Table  
to this subsection; or

(ii) that is prescribed; and

(b) before the disease was first diagnosed,  
was employed as a firefighter for the  
qualifying period—

(i) specified in column 3 of the Table  
in respect of the disease specified  
in column 2; or

(ii) that is prescribed; and

(c) was exposed to the hazards of a fire  
scene during that period—

the disease is deemed to be due to the nature  
of the employment as a firefighter unless the  
employer or the Authority or a self-insurer,  
as the case may be, proves to the contrary.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Disease</i>	<i>Qualifying period</i>
1	Primary site brain cancer	5 years
2	Primary site bladder cancer	15 years

See:  
Act No.  
10191.  
Reprint No. 18  
as at  
1 July 2011  
and  
amending  
Act Nos  
80/2010,  
76/2011,  
18/2012,  
22/2012,  
27/2012,  
43/2012 and  
68/2012.  
LawToday:  
www.  
legislation.  
vic.gov.au

Accident Compensation Legislation (Fair Protection for Firefighters) Bill  
2011

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Part 2—Amendment of Accident Compensation Act 1985 and Workers  
Compensation Act 1958

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Disease</i>	<i>Qualifying period</i>
3	Primary site kidney cancer	15 years
4	Primary non-Hodgkins 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 cancer	15 years
12	Primary site oesophageal cancer	25 years

- (2) For the purposes of subsection (1)—
- (a) a worker is deemed to have been employed as a firefighter if firefighting duties made up a substantial portion of his or her duties; and
  - (b) a worker who was employed as a firefighter for 2 or more periods that add up to the qualifying period is deemed to have been so employed for the qualifying period.
- (3) If a worker who is suffering, or has suffered, a disease to which this section applies, or the dependants of such a worker, made a claim under this Act which was rejected because the worker or the worker's dependants could

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not establish the disease was due to the nature of the worker's employment, the worker is, or the worker's dependants are, entitled to make another claim in respect of that disease.

(4) If, before the commencement of section 3 of the **Accident Compensation Legislation (Fair Protection for Firefighters) Act 2011**, a worker who is suffering a disease, or who has suffered a disease, to which this section applies received compensation in accordance with this Act in respect of that disease, the worker is not entitled to make another claim in respect of that disease.

(5) If Mr Brian Potter has suffered, or is suffering, from a disease that is specified in column 2 of the Table in subsection (1), that disease is deemed to be due to the nature of Mr Potter's employment before the disease was first diagnosed for the purposes of a claim made by Mr Potter or his dependants under this Act."

**4 New section 12AA inserted in Workers Compensation Act 1958**

After section 12 of the **Workers Compensation Act 1958** insert—

**"12AA Certain diseases deemed to be due to nature of firefighting**

- (1) If a worker—
- (a) suffers or suffered a disease—
    - (i) specified in column 2 of the Table to this subsection; or
    - (ii) that is prescribed; and

See:  
Act No.  
6419.  
Reprint No. 15  
as at  
5 August 2006  
and  
amending  
Act Nos  
97/2005,  
69/2009,  
13/2010 and  
29/2011.  
LawToday:  
www.  
legislation.  
vic.gov.au

Accident Compensation Legislation (Fair Protection for Firefighters) Bill  
2011

Part 2—Amendment of Accident Compensation Act 1985 and Workers  
Compensation Act 1958

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(b) before the disease was first diagnosed, was employed as a firefighter for the qualifying period—

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(i) specified in column 3 of the Table in respect of the disease specified in column 2; or

(ii) that is prescribed; and

(c) was exposed to the hazards of a fire scene during that period—

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the disease is deemed to be due to the nature of the employment as a firefighter unless the employer proves to the contrary.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Disease</i>	<i>Qualifying period</i>
1	Primary site brain cancer	5 years
2	Primary site bladder cancer	15 years
3	Primary site kidney cancer	15 years
4	Primary non-Hodgkins 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 cancer	15 years

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Accident Compensation Legislation (Fair Protection for Firefighters) Bill  
2011

Part 2—Amendment of Accident Compensation Act 1985 and Workers  
Compensation Act 1958

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Disease</i>	<i>Qualifying period</i>
12	Primary site oesophageal cancer	25 years

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- (2) For the purposes of subsection (1)—
- (a) a worker is deemed to have been employed as a firefighter if firefighting duties made up a substantial portion of his or her duties; and
- (b) a worker who was employed as a firefighter for 2 or more periods that add up to the qualifying period is deemed to have been so employed for the qualifying period.
- (3) If a worker who is suffering, or has suffered, a disease to which this section applies, or the dependants of such a worker, made a claim under this Act which was rejected because the worker or the worker's dependants could not establish the disease was due to the nature of the worker's employment, the worker is, or the worker's dependants are, entitled to make another claim in respect of that disease.
- (4) If, before the commencement of section 4 of the **Accident Compensation Legislation (Fair Protection for Firefighters) Act 2011**, a worker who is suffering a disease, or who has suffered a disease, to which this section applies received compensation in accordance with this Act in respect of that disease, the worker is not entitled to make another claim in respect of that disease."
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**PART 3—AMENDMENT OF COUNTRY FIRE AUTHORITY  
ACT 1958**

**5 New Part VAA inserted**

5 See:  
Act No.  
6228.  
Reprint No. 14  
as at  
16 May 2012  
and  
amending  
Act Nos  
20/2012,  
35/2012 and  
58/2012.  
10 LawToday:  
www.  
legislation.  
vic.gov.au

After Part V of the **Country Fire Authority Act  
1958 insert—**

**'PART VAA—CERTAIN DISEASES DEEMED  
TO BE DUE TO NATURE OF FIRE-FIGHTING  
FOR VOLUNTEER OFFICERS AND MEMBERS**

**66 Purpose**

The purpose of this Part is to enable a  
volunteer officer or member—

- 15 (a) who has performed service as a  
member within the meaning of the  
Country Fire Authority Regulations  
2004 for a specified period; and
- (b) who was exposed to the hazards of a  
fire scene during the period he or she  
performed service as a member; and
- 20 (c) who suffers or suffered a specified  
cancer—

to be compensated without having to prove  
that the cancer was caused by performing  
service as a member.

**67 Certain diseases deemed to be due to  
service as a member**

- 25 (1) For the purposes of this Part, the Country  
Fire Authority Regulations 2004 apply as  
if—

- (a) in regulation 75 of those Regulations there were inserted the following definition—

"*disease* has the same meaning as it has in section 5(1) of the **Accident Compensation Act 1985**";

- (b) after regulation 76(2) of those Regulations there were inserted—

"(3) Subject to regulation 82, for the purposes of determining the entitlement to compensation of a member who suffers or suffered a personal injury that is a disease, if that disease is of a kind specified in the Table to section 86A(1) of the **Accident Compensation Act 1985**, consideration must be given to section 86A of that Act with any variations that are necessary."

- (c) in regulation 82(2)(b) of those Regulations, after "86," there were inserted "86A,";

- (d) after regulation 82(2) of those Regulations, there were inserted—

"(3) For the purposes of regulation 76(3), in considering section 86A of the **Accident Compensation Act 1985**—

(a) service as a member is to be taken to be employment as a firefighter; and

(b) a member is deemed to have been a member performing service as a member if attending or participating in activities specified in the

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Part 3—Amendment of Country Fire Authority Act 1958

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definition of *service as a member* made up a substantial portion of his or her duties; and

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(c) a member who performed service as a member for 2 or more periods that add up to the qualifying period is deemed to have been a member performing service as a member for the qualifying period."

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(2) A reference to the Country Fire Authority Regulations 2004 (the **2004 Regulations**) in this Part is a reference to the 2004 Regulations as in force immediately before the commencement of section 5 of the **Accident Compensation Legislation (Fair Protection for Firefighters) Act 2011** and if the 2004 Regulations are substituted by new Regulations (the **new Regulations**) that have substantially the same effect as the 2004 Regulations, then a reference to those 2004 Regulations in this Part is to be construed as a reference to the new Regulations from time to time.

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**PART 4—REVIEW AND REPEAL**

**6 Review and amendment**

- 5 (1) The Minister must cause an independent review of  
the operation of the amendments made by Parts 2  
and 3 to be undertaken and completed by  
31 December 2015.
- (2) The person who undertakes the review must—
- 10 (a) consider the findings of, and any actions  
taken following, the independent review of  
the operation of the amendments made by  
the Safety, Rehabilitation and Compensation  
Amendment (Fair Protection for Firefighters)  
Act 2011 of the Commonwealth; and
- 15 (b) give the Minister a report of the review  
undertaken under this section.
- (3) The report must be published on the Internet site  
of the Department.

**7 Repeal of amending Act**

This Act is **repealed** on 31 December 2016.

**Note**

20 The repeal of this Act does not affect the continuing operation of  
the amendments made by it (see section 15(1) of the  
**Interpretation of Legislation Act 1984**).

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Accident Compensation Legislation (Fair Protection for Firefighters) Bill  
2011

**Endnotes**

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**ENDNOTES**

By Authority. Government Printer for the State of Victoria.

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