



# 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.

The current situation in other states;

- **Western Australia** - the WA Liberal National Government has introduced coverage for career firefighters and is drafting the equivalent volunteer legislation for introduction in 2014. It has announced that both will operate as of 1 July 2013.
- **South Australia** – the new SA legislation places a discriminatory eligibility requirement on volunteers, causing anger among SA volunteers, who are now campaigning to remove that discriminatory element from the legislation. However the fact remains that another state has accepted the need for presumptive legislation for firefighters.
- **Tasmania** – presumptive legislation now covers Tasmanian volunteer and career firefighters. VFBV feels the Tasmanian legislation is flawed, in that it requires volunteers to have specific numbers of turnouts before they qualify for coverage. The legislation will come up for review during 2014.

## **What we are asking MPs to do**

VFBV calls on all Victorian MPs for their active support for presumptive legislation to simplify access to cancer compensation for firefighters. We are asking all Victorian MPs to take up the issue, and we ask those who don't support presumptive legislation to explain why they do not.

VFBV plans to openly communicate progress on this issue to our members and the general public, including making a summary of feedback from MPs available on the VFBV website.

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