

Queensland's deemed disease laws for full time, auxiliary and volunteer firefighters

On 17 September 2015, the Queensland Parliament passed the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2015* (the Act). Included in the Act are legislative amendments that fulfill the Government's election commitment to provide Queensland firefighters with greater certainty in their workers' compensation coverage for latent onset diseases.

Deemed Disease Amendments

Amendments introduced by the Act provide that Queensland firefighters who have been diagnosed with one of 12 specified cancers and have been employed for the respective qualifying period in an active firefighting role, then their cancer will be deemed to be work related for the purposes of accessing workers' compensation benefits.

Permanent firefighters and part-time auxiliary firefighter employed by Queensland Fire and Emergency Services and volunteer firefighters and fire wardens engaged by the Rural Fire Service Queensland who contract one of the 12 specified cancers will be eligible under the deemed disease provisions.

The 12 specified cancers and respective qualifying employed periods are the same as those in other jurisdictions:

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

Deeming the specified cancers to be work-related reverses the onus of proof so that WorkCover Queensland must prove that a firefighter's cancer is not work related.

This means firefighters will be entitled to immediate statutory entitlements such as coverage for medical expenses and income replacement benefits. (If they are still working, a firefighter's income benefits equate to either 85 per cent of their weekly wage or up to 80 per cent of Queensland's Ordinary Time Earnings (\$1,456.60 as of 1 July 2015). If a retired firefighter receives a Commonwealth benefit such as unemployment benefits, then they will receive either their usual weekly earnings or the maximum amount they are able to earn before their benefit is reduced, whichever is less.)

Depending on their degree of permanent impairment, firefighters will also be eligible for a lump sum compensation payment under either the statutory scheme or common law damages. Under the amendments, volunteer firefighters with a claim accepted for a deemed disease will now be treated the same as full time and auxiliary firefighters in terms of entitlements. For example, volunteer firefighters will, for the first time have the option of seeking common law damages for their cancer. In the unfortunate event that their cancer becomes terminal, a firefighter's beneficiaries will also be able to access statutory lump sum benefits or common law damages.

The provisions apply to all current or former firefighters who are diagnosed with one of the scheduled cancers on or after 15 July 2015.

There are no time limits on claims from retired or former firefighters who contract one of the 12 specified cancers. Employed firefighters can also include time spent serving as an active volunteer firefighter or fire warden with the Rural Fire Service Queensland in order to meet the necessary qualifying period of service.

Reporting mechanisms will be introduced to support volunteer firefighters in building an accurate history of their active firefighting service and exposure incidents. This data will feed back into the ongoing monitoring and assist brigades to better identify their overall work health and safety risks.

To ensure volunteer firefighters are treated beneficially in the absence of attendance records that demonstrate active firefighting service, a review panel is being established to make recommendations to WorkCover Queensland on whether to accept or reject a deemed disease claim. The review panel will be chaired by a representative of Queensland Fire and Emergency Services and have representation from firefighter associations, the Office Industrial Relations and WorkCover Queensland. The review panel will review all available information gleaned from any station records, verbal histories etc. that assist in decision making.

Firefighters who do not have an accepted deemed disease claim will still be able to claim under the workers' compensation scheme's general entitlement provisions.

Frequently asked questions

1. What are the new worker's compensation provisions for firefighters?

Under the new deemed disease laws, all Queensland firefighters who have been diagnosed with one of 12 specified cancers, and have been employed for the respective qualifying period in an active firefighting role, will have their cancer deemed as work related for the purposes of accessing workers' compensation benefits. This means a firefighter does not have to prove that the specified cancer is work related.

Permanent and auxiliary firefighter employed by Queensland Fire and Emergency Services and volunteer firefighters and fire wardens engaged by the Rural Fire Service Queensland are all defined as firefighters for the purposes of these provisions.

2. What counts as ‘active firefighting service’ and how will this be counted in years?

Section 36E(2) of the *Workers’ Compensation and Rehabilitation Act 2003* provides that active firefighting service will include firefighting service where the person attends fires to the extent reasonably necessary to fulfil the purpose of their employment.

‘Employment’ includes participating as a volunteer or fire warden with the Queensland Rural Fire Service and ‘firefighting’ means extinguishing, controlling or preventing the spread of a fire, such as damping down, training and undertaking controlled burn-offs.

3. I have had a break in continuous service. Am I still eligible to apply?

Yes. The deemed disease laws enables a firefighter’s total years of service to include more than one period of employment as an active firefighter. For example, an auxiliary firefighter who serves for three years, then moves to another state but returns to Queensland and re-joins to actively serve for another five years would have a total of eight years of service.

Distinct periods of employment as more than one type of firefighter can be combined in order meet the qualifying period of service. For example, a retiree who served 10 years as permanent firefighter and had served five years as an active volunteer firefighter in retirement would have a total of 15 years of service for the purposes of their claim.

4. I have been a firefighter in another Australian state or territory. Can I still apply?

The provisions only apply to time spent employed as a firefighter in Queensland. This does include time spent deployed as a Queensland firefighter fighting fires in other states or territories but not time spent employed by another state or territory fire service.

If a firefighter has been employed or engaged as a firefighter in another state or territory, then any injury they have suffered as the result of that employment is subject to that state or territory’s workers’ compensation laws. For example, a firefighter who was employed by the South Australian Metropolitan Fire Service would need to apply for compensation under South Australian workers’ compensation scheme. Most Australian schemes have similar deemed disease provisions for firefighters.

5. How do I make a claim and what information will need to be included?

The application process for a firefighter diagnosed with one of the 12 specified cancers is essentially the same as it is for any other injury where a claim is lodged with WorkCover Queensland with supporting medical certification of their cancer from their treating specialist.

Claims can be lodged by calling WorkCover Queensland on 1300 362 128; completing and submitting an online claim form at www.worksafe.qld.gov.au

6. What happens once I lodge my application?

WorkCover Queensland assesses all applications for compensation in the same way. Once an application has been lodged, the claims assessor will assess the information provided in the worker’s application to determine whether it fulfils the requirements of the Act. In the case of the deemed disease laws, this will involve determining whether the firefighter has been diagnosed with one of the specified cancers and whether they were employed as a firefighter for the required qualifying period of active service. To assist in this process, WorkCover’s claims assessor will contact the Queensland Fire and Emergency Services and treating doctors to verify the information provided in their application.

7. My brigade doesn’t have good historical records. Can I still make a claim?

The Government is committed to ensuring that the deemed disease laws for firefighters are workable and that firefighters making claims are treated fairly. Like other Australian states and territories that have these deemed disease laws, the Queensland legislation allows WorkCover Queensland to rebut or refuse a claim where they determine the cancer is not related to firefighting work.

Given the absence of detailed historical records, an administrative process is being introduced to determine active firefighting service. A review panel will be established chaired by a representative of the Rural Fire Service Queensland with representation from other key firefighter stakeholder groups, Office of Industrial Relations and WorkCover Queensland.

The role of the review panel will be to build an evidence base on which to make a judgement about whether a person has been involved in active firefighting activities for the required period of time relating to the cancer. Station records, Queensland Fire and Emergency Services data and the collation of local knowledge will be used to build a complete picture. This could involve interviewing relevant station personnel including volunteers about the types of exposure events and types of work they have been involved with.

The decisions of the review panel will be reported back to Parliament each year as part of WorkCover Queensland's annual reporting requirements.

8. How will the review panel be appointed?

The review panel will be appointed by the Hon. Curtis Pitt, Treasurer, Minister for Employment and Industrial Relations, Minister for Aboriginal and Torres Strait Islander Partnerships. In making appointments to the review panel representatives of firefighting associations will be consulted.

9. Why do the deemed disease laws only apply to firefighters diagnosed with a specified disease on or after 15 July 2015?

The new laws take effect from the date the Amendment Bill was introduced into the Queensland Parliament (15 July 2015). This date was used rather than the date when the laws are proclaimed, because the government wanted to ensure that no firefighter diagnosed with a specified cancer between the Bill's introduction and proclamation would be ineligible to apply for compensation under the deemed disease laws.

Further, a firefighter's entitlement to compensation arises when they are first diagnosed. So a firefighter who is diagnosed with one of the specified cancers after 15 July 2015 is entitled to apply for compensation under the deemed disease laws.

10. Is there a time limit on retired firefighters applying under the deemed disease provisions?

Unlike other Australian states and territories that have introduced deemed disease laws for firefighters, there is no time limit on retired or former Queensland firefighters applying. However, the firefighter must lodge an application for compensation with WorkCover Queensland within six months of being diagnosed with the specified cancer.

11. What entitlements are available to volunteer firefighters with accepted claims?

For the first time volunteer firefighters will have the same entitlement to compensation as fulltime and auxiliary firefighters. A firefighter with an accepted deemed disease claim will be entitled to:

- statutory benefits such as coverage for medical expenses. If the firefighter is still working, a firefighter's income benefits equate to either 85 per cent of their weekly wage or up to 80 per cent of Queensland's Ordinary Time Earnings (\$1,456.60 as of 1 July 2015). If the firefighter is retired or receives a Commonwealth benefit or pension, then they will receive either their usual weekly earnings or the maximum amount they are able to earn before their benefit is reduced, (whichever is less);
- statutory lump sum compensation of up to \$314,920 depending on their degree of permanent impairment; or
- access to common law damages for the injury. This is a new entitlement.

In the unfortunate event that the specified cancer becomes terminal, a firefighter's beneficiaries will also be able to access statutory lump sum compensation or common law damages.

12. What are my rights if my application for compensation is rejected?

The *Workers' Compensation and Rehabilitation Act 2003* provides a review and appeal process for all workers who are aggrieved by a rejected application for compensation.

If WorkCover Queensland decides to reject an application for compensation, the firefighter may apply to the Workers' Compensation Regulator for a review of WorkCover Queensland's decision. The firefighter will have 90 days to lodge a review application starting from the date WorkCover Queensland advised of its written reasons for its decision. There is no cost to lodge a review application.

The Regulator can decide to uphold WorkCover Queensland's original decision, set the decision aside and return the application to WorkCover Queensland for further investigation and determination or replace it with a new decision.

If firefighter objects to the review decision made by the Regulator, the decision can be appealed to the Queensland Industrial Relations Commission. An application for appeal must be lodged within 20 business days of receiving the Regulator's review decision.

13. How can I access my records with Rural Fire Service Queensland?

The Rural Fire Service Queensland Area Office can provide records including joining date, brigades served and membership type (e.g. Fire Fighter, Support Member etc.). It is now a requirement for individual attendance at hazard reduction burns and incidents to be recorded on the incident report produced by each brigade.

14. Can I still apply for workers' compensation if I have been diagnosed with a medical condition that is not covered by the deemed disease provisions?

Yes, firefighters can lodge an application for compensation for any injury they incur in the course of their firefighting duties. This can include latent onset diseases that are not included in the list of 12 specified cancers. These claims will be subject to the general provisions of the Act.

15. Who can I contact for further information?

Further information on understanding the new deemed disease laws, at www.worksafe.qld.gov.au or telephone WorkCover on 1300 362 128.