



BULLETIN

Bulletin No: 026

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TO ALL UFUA MEMBERS

Important Precedent in Comcare Presumptive Cancer Case

As members would be aware, the Australian Parliament passed important changes to the Comcare legislation last December, which had the effect of expanding the number of cancers covered by Commonwealth presumptive laws to 20 (see [National Bulletin 15](#) & [National Bulletin 17](#)). At the very time those changes were being made, an attack against the presumptive provisions was underway in the Australian Capital Territory. Thankfully, we were successful in seeing off that threat to firefighter cancer coverage. Details follow...

Important Compensation win –

- **Service as a Communications Centre firefighter counts towards the qualifying period;**
- **Exposure to the hazards (found) at a fire scene may be transported away from the fire scene (e.g. through exposure to contaminated equipment);**

An ACT firefighter with 30 years service was locked in a battle with the ACT Government and their workers compensation insurer EML. 27 months passed between the cancer diagnosis, and the decision of the Administrative Appeals Tribunal (AAT).

The firefighter was diagnosed with prostate cancer, which is covered under presumptive legislation for firefighters who have served a minimum qualifying period of 15 years. The firefighter's claim was rejected by Comcare on the basis that he was not 'employed as a firefighter' for the relevant qualifying period. The firefighter sought review of that determination and Comcare determined that because firefighting duties did not make up a substantial portion of his duties for 15 years he was not employed as a firefighter for the relevant qualifying period.

The ACT Government and the insurer also argued:

- service in the employ of a firefighting agency, other than service as a firefighter (in the ordinary sense of that word), is not capable of counting towards the 15-year qualifying period;

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The arguments mounted against the firefighter, if successful, had the potential to undermine presumptive cancer coverage for firefighters:

- in training, logistics, fire prevention, communications and planning roles; and
- at senior officer level.

Recognising the importance of this case, and the similarities between this case and previous cases that the UFUA had fought in Tasmania and Queensland, the National Executive approved expenditure to assist the ACT Branch to challenge the arguments against the retired firefighter.

Ultimately, the arguments prepared by the UFUA and ACT Branch were successful.

Important findings of the AAT included:

- the (ACT Government's) emphasis on the significance of accumulated exposure ignores the fact that the amendments (made following the 2011 Senate Committee Inquiry) quite advertently seek to use proxies for exposure in order to relieve firefighters of the burden of proving certain matters;
- The (Senate) Committee Report notes that the hazards of a fire scene are both pervasive and insidious. It recognises that the hazards of fire may be transported away from the fire scene by firefighters and the equipment they carry.
- A single exposure threshold would not be consistent with the (Senate) Committee's acceptance that it is cumulative exposure to toxins which is the source of the risk to firefighters.

Firefighters should not have to endure this kind of litigation, especially while they are undergoing treatment for cancer. It is sadly ironic that at the same time the ACT Government was seeking to lower the threshold for presumptive rights (by trying to abolish the requirement that firefighting be a substantial portion of duties), it was nitpicking over a firefighter's 30-year service record.

Noting that the Commonwealth presumptive cancer laws set a template for laws across Australia, this is an important case with far reaching implications. It demonstrates the importance of the national union in protecting firefighter rights nationally.

A copy of the Administrative Appeals Tribunal decision can be found [here](#).

Strength In Unity

Authorised by National Secretary Greg McConville