



UNITED FIREFIGHTERS UNION OF AUSTRALIA
UNION OF EMPLOYEES QUEENSLAND

Submissions regarding

**Workers' Compensation and Rehabilitation and other Legislation Amendment
Bill 2015**

**Workers' Compensation and Rehabilitation (Protecting Firefighters)
Amendment Bill 2015**

United Firefighters' Union of Australia, Union of Employees, Queensland (UFUQ) – 6 August 2015

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Submissions regarding Workers' Compensation and Rehabilitation and other Legislation Amendment Bill 2015 and Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015.

1. Request for permission to publish this submission

UFUQ requests permission from the committee to publish this submission, particularly for the information of our members, interstate firefighter unions, and Queensland unions affiliated with the Queensland Council of Unions (QCU).

We authorise the publication by the parliament.

2. United Firefighters' Union Australia, Union of Employees Queensland (UFUQ)

The United Firefighters' Union of Australia, Union of Employees, Queensland (UFUQ) is an industrial organisation of employees registered under the *Industrial Relations Act 1999*.

UFUQ is affiliated with the Queensland Council of Unions (QCU).

UFUQ is bound by awards of the Queensland Industrial Relations Commission and is party to a number of certified agreements made and registered under the Act .UFUQ has a history of representing our members and bargaining under the Act.

UFUQ supports our members with workers' compensation matters and provides legal and industrial representation where required.

We examine legal issues affecting our members and provide information and submissions to advance and protect the interests of our members.

UFUQ have approximately 2500 members, both full time and part time, who are affected by the Bills. Our members respond to almost every emergency situation not only in Queensland but interstate and internationally. Our members are extremely dedicated in all facets of firefighting and rescue.

Our members are highly regarded by the Queensland community.

Queensland firefighters are affiliated with the national United Firefighters Union of Australia (UFUA).

We have a Queensland branch of the federal UFUA.

UFUQ and UFUA have worked closely together over the last few years to advance the issue of 'presumptive legislation' on behalf of firefighters across Australia.

3. Introductory comments

There are currently two Bills before the parliament that seek to increase protection for firefighters who contract specified cancers through their work. The Bills create a rebuttable presumption that specified cancers result from a firefighter's employment as a firefighter and are therefore compensable under the *Workers' Compensation and Rehabilitation Act 2003*.

The two Bills are the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015* and the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015*. The former *Bill 2015* also includes other changes to workers compensation laws.

The UFUQ will address the breath of proposed amendments in the two Bills, but identify at the outset that the occupationally specific nature of the presumptive legislation included in both Bills provides an opportunity for the union representing firefighters to make broad comment on this provision. It should be highlighted that the provision of presumptive legislation to recognise occupational cancer for firefighters does not create new entitlements; rather it is a mechanism to ensure firefighters can access their entitlements as they would for any other work-related illness or injury. It assists the administration of the claim.

Both Bills provide a presumption of occupational cancer for firefighters to remove barriers that currently prevent, or discourage, firefighters from accessing entitlements to treatment, assistance and compensation for the 12 listed cancers.

Presumptive legislation is accepted as an appropriate method to address injustices in the operation of workers' compensation schemes in relation to determining the work-relatedness of occupational illness and disease.

4. The Bills

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015

On 15 July 2015 the Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships introduced the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015* into the Queensland Parliament. In accordance with Standing Order 131, the Bill was referred to the Finance and Administration Committee for detailed consideration. The Parliament agreed a motion that the Committee report by 4 September 2015.

The policy objectives of the Bill, as outlined in the explanatory notes, are to implement pre-election commitments made by the Government as part of the *Restoring the rights of Queenslanders injured at work* policy, including to:

- reinstate common law rights for injured workers that were affected by changes made by the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013* (the 2013 Amendment Act) and establish the ability to provide additional compensation to particular workers impacted by the operation of the common law threshold;
- provide greater certainty of entitlement and accessibility to compensation for firefighters by introducing deemed disease provisions for firefighters with prescribed diseases; and
- prohibit prospective employers from continuing to access an individual's claims history as they have been able to following other changes made by the 2013 Amendment Act.

The Bill also makes a number of other minor miscellaneous amendments that will improve the day-to-day operation of Queensland's workers' compensation scheme.

Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015

The *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015* was introduced by the Member for Kawana on 3 June 2015. This Bill was initially referred to the Legal Affairs and Community Safety Committee. The Parliament agreed a motion that that this Bill be referred to the Finance and Administration Committee and that the Committee report by 4 September 2015. The issues considered

in this Bill are also considered as part of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*.

The policy objectives of the Bill, as outlined in the explanatory notes, are to introduce deemed disease coverage for Queensland full-time, auxiliary and volunteer firefighters who contract one of 12 specified cancers in the course of their employment.

5. Presumptive legislation

Firefighters and the incidence of cancer has been the focus of many studies. It is now accepted internationally that there is a nexus between firefighting and the incidence of some cancers. It is known and accepted that firefighters are exposed to a range of toxins and carcinogens through their duties of firefighting. The toxins in structural fires including residential fires are not country-specific. Construction materials, fabrics, furniture and electronics are universal.

Studies have shown that there is an elevated risk of the cancers listed in the Bills for firefighters as a result of firefighting duties. Other jurisdictions have accepted those studies and enacted similar presumptive legislation as a result.

[see *Safety, Rehabilitation and Compensation Act 1988* (Cth); *Workers Rehabilitation and Compensation Act 1988* (Tas)]

In much of the research there is a gap in regard to level of impact experienced by volunteer firefighters. Similarly, much of the research deals with the toxic environments produced by structural fires and building contents, and not as much emphasis has been placed upon wildfires. As research progresses this gap will close. What is clear is that there is known and recognised elevated risks of the cancers listed in the Bills for all firefighters.

The risk of exposure to toxins and carcinogens cannot be completely eliminated. It is the inherent nature of firefighting, and the protective equipment, that firefighters will be exposed to toxins while performing firefighting duties.

While there is persuasive evidence that firefighters have an elevated risk of diagnosis of a number of cancers, it has proven difficult for doctors to definitively state in a particular circumstances whether a firefighter's diagnosis has, on the balance of probabilities (as opposed to possibilities), resulted from their employment as a firefighter.

As a result, it has been difficult for firefighters to prove the work-relatedness of their condition for the purpose of, the mechanism necessary to remedy this inherent and unintended injustice in workers compensation is presumptive legislation. Presumptive legislation does not create a new entitlement. It is a legislative mechanism to presume specific cancers have resulted from firefighters' occupational exposures so that the firefighters can access assistance and compensation as they would for any other work-related injury or illness.

It is a rebuttable presumption.

Where it can be proven (on the balance of probabilities) that a firefighter's cancer has not resulted from their employment as a firefighter they will not be entitled to workers' compensation benefits.

When it is a work-related illness such as cancer, it has been more difficult for the firefighter to access the treatment, assistance and compensation for the work-related disease. It has inevitably required the firefighter to commence legal proceedings which are adversarial and protracted, emotionally and financially stressful.

6. The Bills – as they relate to firefighters

Both the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015* and the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015* intend to provide for a rebuttable presumption that specific cancers are occupational cancers for firefighters.

Both Bills model the Australian Federal legislation listing the same 12 cancers with the provision for additional cancers to be added and for career firefighters require the same qualifying period for each of the specific cancers.

Both Bills provide for the rebuttable presumption to apply to full time, and part time firefighters and volunteer firefighters including rural firefighters.

Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015

This Bill almost replicates the Federal Bill to apply the presumption for the same cancers with the same qualifying periods for career firefighters.

The Bill does not replicate the Federal Bill in that;

- it omits to provide for the inclusion of additional cancers as the science develops;
- it provides for the qualifying period to be calculated combining service as a career firefighter and a volunteer firefighter;
- it provides for the presumption to be applied when a volunteer firefighter is not a career firefighter.

The Bill's current drafting of proposed new section 32A (7) arguably only applies the presumption in respect of career firefighters who have been employed under the *Fire and Emergency Services Act 1990*. This distinction excludes firefighters employed under previous legislation, authorities or instruments.

The Bill's current drafting also arguably only applies the presumption in respect of rural firefighters who are or have been a member of a rural fire brigade registered under the *Fire and Emergency Services Act 1990*. This distinction excludes rural firefighters who were members of rural fire brigades registered under previous legislation, authorities or instrument.

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015

This Bill is modelled on the principles of the Federal Bill to apply the presumption for the same cancers with the same qualifying periods for career firefighters.

It does not replicate the Federal Bill in that it omits to provide for the inclusion of additional cancers as the science develops.

The Bill is modelled on the Tasmanian model as it applies to the presumption to a volunteer claimant who can demonstrate that during the qualifying period for the specific cancer the volunteer firefighter attended 150 specified number of exposure incidents, and does not include any requirement for exposure to a fire scene.

The current drafting of proposed section 36B arguably only applies the presumption in respect of career firefighters who have been employed under the *Fire and Emergency Services Act 1990*. This distinction excludes firefighters employed under previous legislation, authorities or instrument.

In addition, the current drafting arguably only applies the presumption in respect of rural firefighters who are or have been a member of a rural fire brigade registered under the *Fire and Emergency Services Act 1990*. This distinction excludes rural firefighters who were members of rural fire brigades registered under previous legislation, authorities or instrument.

In the proposed section 36C the meaning of exposure incident is currently confined to *“the firefighter participates in extinguishing, controlling or preventing the spread of the fire at the location.”* This definition is applied in the provisions for volunteer firefighters in determining the number of years’ service (proposed section 36E) as well as determining the attendance at the required 150 exposure incidents (proposed section 36D). This definition is also to be applied for career firefighters in determining the firefighter has met the qualifying period (proposed section 36E). This definition omits other exposures to a fire scene such as fire investigation, post fire when firefighters can be exposed to embers and off-gassing, training, undertaking a demonstration, competitions etc.

The Federal legislation threshold for career firefighters is “exposed to the hazards of a fire scene” which encompasses all circumstances of exposures.

7. Presumptive legislation - omissions affecting both Bills

There are some matters omitted from both Bills that require addressing to ensure the more affective operation of the presumptive legislation.

These are outlined below;

Qualifying periods: date of application/manifestation - Currently the presumption for the same cancers and same qualifying periods already apply to aviation firefighters employed by Air services by virtue of the Federal 2011 “Fair Protection for Firefighters” Act. The Aviation firefighters in Queensland have had this protection since 9 July 2011.

Therefore any aviation firefighter who has been diagnosed with one of the listed cancers on or since 9 July 2011 and who has been employed as a firefighter for the required qualifying period for that cancer would have the protection of the presumption.

It would therefore be just and reasonable to apply the presumption for Queensland state firefighters for any such cancer diagnosis from 9 July 2011 that meets the requirements under the Bill to ensure that all firefighters in Queensland have the protection from the same date.

To omit to do so may give rise to circumstances where a state firefighter is denied the application of the presumption only due to the manifestation date whereas that same firefighter would have had the protection of the presumption had that firefighter been employed by Air services working at a Queensland airport.

Coverage - A question also arises in regard to the coverage of this Bill, and indeed the federal legislation, to firefighters engaged at Oakey Military Airport. These firefighters are contracted by Transfied to undertake firefighting at the airport. It appears on the surface that neither the two Bills subject to these deliberations,

or the federal legislation, which covers air service aviation rescue firefighters, and firefighter employed by Australian Capital Territory and Rescue covers these employees. This omission will need to be addressed by the committee in its Report, and subsequent amendment so the Bills or legislation to accommodate for these firefighters.

Employer reporting requirements - There are also matters pertaining to employer reporting requirements that require inclusion in the Bill by way of amendment to include the requirements for the employer to provide the necessary information to Workcover Queensland so that the presumption can be applied.

8. The Bills – other issues

The Workers Compensation and Rehabilitation and Other Legislation Amendment Bill 2015 includes a number of other key legislative changes that are not related to the major issue of presumptive legislation.

This Bill seeks to reverse a number of the 2013 amendments, notably the 5% threshold for Common Law claim. The UFUQ supports the policy intention to reverse the changes made by the previous parliament and provides the following submissions about these matters to the committee:

Common law

In 2012, the Finance and Administration Committee launched an Inquiry into the operation of the Queensland's Workers' Compensation Scheme at the request of the LNP government. One of the focus areas of this inquiry was to review the effectiveness of the 2010 legislative amendments that sought to reduce the amount of common law litigation associated with workers' compensation claims. The committee considered 246 submissions through its 11 month inquiry, and the final report contained 32 recommendations.

Despite the committee's objective to reduce common law litigation, the government was advised against any changes to the threshold for injured workers to access relief at common law. The committee found that the imposition of a common law threshold would unacceptably infringe on the basic rights of working people and recommended no change.

In spite of this recommendation, the previous Parliament amended the *Workers' Compensation and Rehabilitation Act* (the Act) in 2013 to impose a common law threshold of 5% Whole Person Impairment (WPI) to injured workers seeking to apply for compensation at common law.

That particular amendment was voted on by parliament as a matter of urgency, and not considered by the parliamentary committee, and relevant stakeholders did not scrutinise or comment on that particular change.

UFUQ supports the removal of the 5% common law threshold.

Interim claims

This Bill will apply retrospectively to January 30 2015. It will not cover workers injured between 15 October 2013 and 30 January 2015. Workers who have sustained a permanent injury assessed as less than 5% WPI during this period will remain restricted from common law remedies.

The Treasurer informed parliament on 15 July 2015 that the Government is working with a stakeholder reference group to mitigate the losses of workers injured in this interim period. UFUQ holds some concerns about workers who might be disadvantaged by falling within that period.

UFUQ asks the committee to consider how this group of workers might be accommodated.

Access to claims history

Section 571D of the Act currently allows prospective employers to apply to the Workers' Compensation Regulator to gain access to the claims history of prospective employees. This provision amounts to a serious breach of the employees' right to privacy, and serves no purpose other than to aid employers in taking into account improper considerations.

This Bill seeks to remove section 571D. The UFUQ supports this proposed amendment.

9. What to do with two Bills

The proximity of issues covered across the two Bills as they relate to presumptive legislation applying to firefighters renders either one Bill superfluous or the components of the other redundant. The UFUQ in reviewing both Bills has assessed that there are some noticeable omissions from the Private Members Bill including (but not limited to) that it:

- excludes service of firefighters prior to the commencement of the *Fire and Emergency Service Act 1990* from being taken into account when deciding if the period of service thresholds have been met;
- excludes coverage of firefighters engaged in a contracting capacity ;
- leaves open the possibility that firefighters with specified disease that are terminal will not have access to the significant terminal illness lump sums;
- places no obligation on employers to provide relevant records – firefighters would be required to apply for the information under the Information Privacy Act or Right to Information Act – a time consuming, and in the latter instance costly, administrative process.

The process for effective legislative change should be to adopt as broadly all issues that require coverage in the one Bill. This can be achieved by either proceeding with the Government introduced Bill with any related amendments to ensure that omissions identified in this submission are covered; or amending substantially the private member's Bill to include the breadth of matters covered in the Government's Bill.

Either process will ensure that the broad range of matters affecting firefighters are dealt with holistically; along with other related issues affecting workers compensation and rehabilitation. As both the Member for Kawana and the Government in introducing the respective Bills have raised either directly or by inference the importance of ensuring a collaborative approach to resolving these issues, it appears that the good will is there to address these important issues for the benefit of Queensland workers, and firefighters in particular.

Other than for the requirement for volunteer firefighters to prove attendances at 150 fire incidents, the operation of the presumption in both the Private Members Bill and Government Bill would operate in the same way.

In our view the introduction of a presumption is a necessary first step, but other amendments are required to ensure that the interests of firefighters are protected.

Although the Government Bill may not be as comprehensive as we would like, it does at least anticipate that other amendments beyond the introduction of the presumption are required. The Private Members Bill does not. We encourage the committee to provide a response in their report that factors in the amendment to either of the two Bills to provide for a holistic outcome to address the issues covered in this submission.

10. Concluding comments

The two Bills are the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015* and the *Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill 2015*. The former *Bill 2015* includes broader changes to workers compensation laws; whilst the latter bill addresses occupationally specific matters pertaining to firefighters. Both Bills show a commitment to addressing the occupationally specific issue of presumptive legislation.

The UFUQ encourages the committee to look towards a co-operative parliamentary approach to dealing with the long overdue recognition, through presumptive legislation, of occupational cancer for firefighters by removing barriers that currently prevent, or discourage, firefighters from accessing entitlements to treatment, assistance and compensation for the 12 listed cancers.

The UFUQ also encourages the committee to consider the other matters raised in this submission including:

- providing for the inclusion of additional cancers as the science develops;
- accommodating for qualifying periods for any such cancer diagnosis from 9 July 2011 to prevent the circumstances where a state firefighter is denied the application of the presumption only due to the manifestation date whereas that same firefighter would have had the protection of the presumption had that firefighter been employed by Air services working at a Queensland airport;
- considering whether the legislation should cover all firefighters not otherwise protected, including those engaged by sub-contractors;
- requirements for the employer to provide the necessary information to Workcover Queensland so that the presumption can be applied;
- removing the 5% common law threshold;
- accommodating for workers who have sustained a permanent injury assessed as less than 5% WPI during the period 15 July 2013 and 30 January;
- removing section 571D.