

The Senate

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Education, Employment  
and Workplace Relations  
Legislation Committee

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Safety, Rehabilitation and Compensation  
Amendment (Fair Protection for Firefighters)  
Bill 2011 [Provisions]

September 2011

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Senator Bridget McKenzie, Nat., Vic.

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# **RECOMMENDATIONS**

## **Recommendation 1**

**2.19** The committee recommends that the types of cancer listed by the proposed Bill be expanded to include multiple myeloma, primary site lung cancer in non-smokers, primary site prostate, ureter, colorectal and oesophageal cancers.

## **Recommendation 2**

**3.58** The committee recommends that proposed subsection 7(8) of the Bill be amended to replace the term 'dominant' cause with 'significant' cause.

## **Recommendation 3**

**3.59** The committee recommends that proposed subsection 7(9)(b) of the Bill be amended to replace the term 'several periods' with 'more than one period'.

## **Recommendation 4**

**4.43** The committee recommends that this Bill be passed subject to the foregoing recommendations.





# CHAPTER 1

## Background

### Reference

1.1 On 5 July 2011, the Senate referred the provisions of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 to the Senate Standing Legislation Committee on Education, Employment and Workplace Relations for inquiry and report by 15 September 2011.

1.2 The Bill was introduced into Parliament by Mr Adam Bandt MP on 4 July 2011 and co-sponsored by Ms Maria Vamvakinou MP and Mr Russell Broadbent MP.

### Conduct of the inquiry and submissions

1.3 The committee advertised the inquiry in *The Australian* on 20 July 2011, calling for submissions by 29 July 2011. Details of the inquiry were placed on the committee website.

1.4 The committee contacted a number of organisations inviting submissions to the inquiry. Submissions were received from 27 individuals and organisations, as listed in Appendix 1.

1.5 Public hearings were held in Melbourne on 9 August, Canberra on 23 August and Perth on 2 September 2011. Witness lists for the hearing are at Appendix 2.

1.6 The committee also conducted a number of site visits in Melbourne, Geelong and Brisbane.

### Acknowledgement

1.7 The committee thanks those individuals and organisations who made written submissions and gave evidence at the committee's hearings.

1.8 The committee particularly wishes to extend its appreciation to the firefighters, and families of firefighters, who made submissions and those who travelled to relate their personal experiences to the committee at its hearings. These individuals invested valuable time and effort knowing that they personally did not stand to benefit from the provisions of this Bill. Their evidence was both important and extremely moving. The committee thanks them and recognises their efforts to help current and future generations of firefighters.

1.9 The committee is grateful to the United Firefighters Union of Australia for facilitating a series of site visits over the course of this inquiry, which have given the committee valuable exposure to the functions, duties and responsibilities of firefighters. The committee greatly appreciates the time and cooperation it has

received staff at from Aviation Rescue and Fire Fighting (ARFF), a division of Air Services Australia (Tullamarine Station), the Country Fire Authority (CFA) in Geelong, the Queensland Fire and Rescue Service (QFRS) and the Queensland Combined Emergency Services Academy (QCESA) at Whyte Island.

1.10 The committee also extends a particular note of gratitude to Mr Alex Forrest and Fire Chief Ken Block, who travelled from Canada to share with the committee their valuable and extensive experience with presumptive legislation overseas.

## Background

1.11 For several decades scientific studies have shown that firefighters are at increased risk of developing certain types of cancer. This is due to ongoing exposure to carcinogenic particles released by combusting materials of varying toxicity, which firefighters routinely encounter during the normal course of their employment:

Firefighters are by the nature of their work exposed to a large range of chemical carcinogens. Although most chemicals have not been tested for their toxic effects there are a number of chemicals that arise as the products of combustion that have been shown to be carcinogenic.<sup>1</sup>

1.12 Studies have been conducted across a number of countries, and have in recent years been bolstered by comprehensive meta-analyses which provide strong evidence that firefighters are at increased risk of certain types of cancer through accumulated exposure to carcinogens.

1.13 These studies are discussed further in Chapter 2 of this report, which explores the science that underpins the proposed legislation.

## Purpose of the Bill

1.14 The Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 (the Bill) seeks to amend provisions in the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) relating to injuries sustained by firefighters.

1.15 The Bill would provide for a rebuttable presumption that the following cancers developed by qualifying firefighters will be presumed to be work related under Commonwealth law. Subject to qualifying periods set out in the Bill as outlined below, the burden of proof would be removed from the cancer sufferer.

1.16 The seven primary site cancer types covered by the Bill and the respective qualifying periods are:

1. Brain cancer (5 years);

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1 Michael Smith, Deputy Chief Officer, South Australian Metropolitan Fire Service, *Attachment, Submission 13*, p. 35.

2. Bladder cancer (15 Years);
3. Kidney cancer (15 years);
4. Non-Hodgkin's lymphoma (15 years);
5. Leukaemia (5 years);
6. Breast cancer (10 years); and
7. Testicular cancer (10 years).

1.17 The committee received the following definition of a presumption in law:

A presumption in law is a rule of law which permits a court to assume a fact is true until such time as there is a preponderance (greater weight) of evidence which disproves or outweighs (rebutts) the presumption. Each presumption is based upon a particular set of apparent facts paired with established laws, logic, reasoning or individual rights. A presumption is rebuttable in that it can be refuted by factual evidence. One can present facts to persuade the judge that the presumption is not true.<sup>2</sup>

1.18 To qualify, firefighters would need to meet the following threshold tests:

- They must suffer from a prescribed illness;
- They must have been employed as a firefighter for the applicable qualifying period; and
- They must have been exposed to the 'hazards of fire' during the qualifying period.<sup>3</sup>

1.19 In effect, the establishment of this legal presumption would facilitate access to workers' compensation for firefighters who fit the qualifying criteria by shifting the burden of proof from the firefighter to the employer or insurance company seeking to dispute the occupational linkage between a firefighter's cancer and his or her employment duties.

1.20 However, even when the above threshold criteria are met, the presumption that the cancer in question is related to employment would remain rebuttable. The nature of the rebuttable presumption would mean that a firefighter's claim for compensation would remain '...subject to any legal defences otherwise available.'<sup>4</sup>

1.21 This means that acceptance of occupational causation is not automatic:

[I]t does not mean that the employee's claim will automatically be accepted. The employer may provide evidence to show that the disease is due to some other factor that is not employment related and, if that evidence is sufficiently strong, it may rebut the presumption that the disease is

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2 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 7.

3 See Schedule 1, Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011.

4 Slater & Gordon Lawyers, *Submission 14*, p. 3.

employment related. As in all claims, the decision maker has to be satisfied, on the balance of probabilities, that the disease is due to the person's employment. Nevertheless, in the case of the proposed subclause 7(8), the decision maker will be starting with the presumption that, if the condition is a listed disease, and all the other factors are met, then the disease is compensable.<sup>5</sup>

1.22 This would protect employers and insurance bodies, and ensure the policy response is appropriately based on scientifically demonstrable evidence.

1.23 This differs from non-rebuttable presumptive legislation insofar as the latter is based on consistent epidemiological evidence that an illness is linked to a particular cause associated with the workplace or work process in almost every case, as in the case of mesothelioma resulting from asbestos exposure.<sup>6</sup>

### *Coverage*

1.24 The SRC Act has limited coverage:

Each state and territory has its own workers compensation legislation. Coverage of the SRC Act is limited to Commonwealth employees, ACT Government employees and the employees of licensed entities. As a result, coverage of the SRC Act is limited to only a relatively small proportion of the Australian workforce.<sup>7</sup>

1.25 The proposed Bill would therefore cover only employees classified as firefighters under the SRC Act.

1.26 There are currently approximately 2800 firefighters covered by the Act. Of these, around 2000 are employed by the Australian Capital Territory (ACT) Government. Some 1500 of these are volunteer firefighters who would not qualify for coverage by the Bill. Most of the others are firefighters employed by the aviation industry nationwide:<sup>8</sup>

Based on ABS Labour Force Statistics (November 2010), it is estimated that employed firefighters covered by the SRC Act represent approximately eight per cent of the Australian firefighting labour force. The remainder

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5 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 7.

6 See Mario Racco, Parliamentary Assistant to the Minister of Labour, Canada, 'Report to Minister Peters on the treatment of Firefighter Cancer Claims by the Workplace Safety and Insurance Board,' Ontario Ministry of Labour. Available at <http://www.labour.gov.on.ca/english/hs/pubs/firefighters/review.php> (accessed 15 August 2011).

7 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 4.

8 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 6.

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would be covered under state and territory legislation for workers' compensation.<sup>9</sup>

1.27 Ultimately, the Bill would cover:

- Professional firefighters in the ACT (approximately 332); and
- Firefighters employed by Aviation Services throughout Australia (approximately 663).<sup>10</sup>

1.28 Similar presumptive legislation is already in place in much of Canada and the United States, countries which are in many ways analogous to Australia, and is being considered in parts of Europe.

### *Presumptive legislation overseas*

1.29 The majority of jurisdictions in Canada and the United States have enacted comparable presumptive legislation.

1.30 The Canadian province of Manitoba was the first to introduce presumptive legislation of this kind in 2002, following a report on the scientific links between cancer and firefighting commissioned by the province.<sup>11</sup> Being the first jurisdiction to take this step, Manitoba's initial legislation was cautious in nature, covering only five cancers: brain, bladder, kidney, non-Hodgkin's lymphoma and leukaemia.

1.31 Since then, nine of the thirteen Canadian jurisdictions have passed presumptive legislation recognising the link between certain types of cancer and firefighting.<sup>12</sup>

1.32 Manitoba itself today covers fourteen cancers, with the scope of the legislation expanded following further research linking a greater number of cancers with firefighting as an occupation.<sup>13</sup> The committee was advised that the few remaining Canadian provinces which do not currently have similar presumptive legislation in place are either in the process of implementing it or considering doing so:

We have 10 provinces and three territories. Right now seven provinces have it, two provinces are in the process of putting legislation or regulations forward and in one province two days after I get back to Canada I will be

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9 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 6.

10 United Firefighters Union of Australia, *Submission 19*, p. 11.

11 The report by Dr Tee Guidotti is discussed by Mr Alex Forrest, *Submission 1*, p. 14.

12 For discussion see Mr Alex Forrest, *Submission 1*, p. 6 and *Proof Committee Hansard*, 2 September, pp 4–6.

13 Canadian jurisdictions today list 14 cancers in their presumptive legislation. For discussion see *Proof Committee Hansard*, 2 September 2011, pp 5–6.

meeting with the premier of that province and I believe that province will enact the legislation before the end of the year. Even within our territories two of the three have just passed legislation. The template right now is the 14 cancers that were initially put forward in Manitoba and have now been replicated in Alberta. So now there are 14 cancers and I can tell you that every single province is now looking at moving to the 14 cancers, largely because of the Le Masters study of 2007.<sup>14</sup>

1.33 In the United States presumptive legislation is in place in roughly half of the state jurisdictions, with more pending. The legislation is far from uniform, varying between states in the cancers covered, qualifying periods and other requirements necessary for firefighters to fulfil the criteria for compensation.<sup>15</sup>

1.34 Canada and the United States have responded to science and moved away from the system currently in place in Australia. Here, the onus is on firefighters with cancer to pinpoint a single event, or fire, which caused their illness if they seek to obtain compensation for their illness. For reasons to be discussed later in this report this requirement is very difficult to satisfy and has to date served as an almost insurmountable obstacle to firefighters seeking compensation. In many cases this has left sick firefighters and their families struggling not only physically and emotionally, but also financially, at their time of greatest need. It has meant that firefighters who put their health and lives at risk to help the community are let down when they themselves are in need of assistance.

### **Provisions of the Bill**

1.35 Schedule 1 of the Bill inserts provisions into the SRC Act relating to cancers developed by firefighters.

#### ***Subsection 7(8)***

1.36 A new subsection 7(8) would be added to Part 1 of the SRC Act, providing that firefighters diagnosed with one of seven primary site cancers after a set number of years of employment will have their employment taken to have been the dominant cause of the cancer, unless the contrary is established. Cancers listed in the Bill will not be covered if they are found to be secondary, that is, if they originated in and spread from other parts of the body.

1.37 Subsection 7(8)(a) confines the presumption of occupational illness to cancers identified in the paragraph 1.16. This ensures that 'only the clearest examples of occupational disease can seek to access the presumptive gateway.'<sup>16</sup>

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14 Mr Alex Forrest, *Proof Committee Hansard*, 2 September 2011, p. 6.

15 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 8.

16 Slater & Gordon Lawyers, *Submission 14*, p. 4.

1.38 The inclusion of the qualifying period in provisional subsection 7(8)(b) reflects that:

...broadly considered, the evidence of work relatedness of disease strengthens as the duration of potential occupational exposure increases...

As an alternative, the medical evidence as to the latency periods for the prescribed diseases from occupational exposure could equally have operated as part of the rebuttal process. That is, claims could have been contested on the basis of insufficient latency to support a work contribution. The approach adopted ought properly be viewed as a concession to finding an approach to the operation of presumptive legislation that takes into account the natural fears that scheme administrators might hold from time to time.<sup>17</sup>

1.39 Subsection 7(8)(c) makes reference to the 'hazards of fire'. Slater and Gordon Lawyers informed the committee that this was '...an important statement of principle going to the heart of the subject matter of the Bill – that the hazards of a fire scene are both pervasive and insidious.'<sup>18</sup> This recognises that the hazards of fire may be transported away from the fire scene by firefighters and the equipment they carry:

The one complicating factor is that when we talk about the hazards of a fire scene that immediately invokes images of attending the fire itself or the immediate aftermath, but the thing with the cancers and the chemicals that firefighters are exposed to in this context is that quite often the hazard can migrate. It might not be the primary exposure at the site; it might be that the hazard is also experienced when cleaning fire equipment or cleaning out the truck back at the station if those chemicals have imposed themselves upon the clothing or the apparatus of a firefighter or on the truck itself. I understand that there is clearly a distinction between a clerical officer working for the department and the firefighter in confronting the hazards of the scene, but I think that we ought not to limit the concept of 'exposure to the hazards of a fire scene' to the immediate emergency because these things have a tendency to migrate away from the scene.<sup>19</sup>

1.40 The committee heard that the proposed legislation draws a line around firefighters and those engaged in firefighting activities. Coverage would not extend to other officers—such as mechanics or clerical officers—employed by the fire services:

The duties of the clerical officer who is running the accounts back at the station do not involve firefighting as a substantial portion of their role; therefore, I do not believe they would fall within the confines of the proposed amendment. I guess the point that I was making was more that a recognised firefighter may have had exposure beyond just at the primary scene, but I think those who are not employed to undertake firefighting

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17 Slater & Gordon Lawyers, *Submission 14*, p. 4.

18 Slater & Gordon Lawyers, *Submission 14*, p. 5.

19 Mr Craig Sidebottom, Slater and Gordon Lawyers, *Proof Committee Hansard*, 2 September 2011, p. 16.



duties will not benefit, so I do not believe it is going to open the floodgates, as it were, to a vast array of claims from perhaps unintended beneficiaries.<sup>20</sup>

### ***Subsection 7(9)***

1.41 A new subsection 7(9) would also be added to Part 1 of the SRC Act. This subsection would stipulate that workers must have been involved in firefighting duties as a substantial portion of their employment in order for subsection 7(8) to apply. Subsection 7(9) also allows firefighters who were employed over several separate periods which add up to the qualifying period to be taken to have been employed for the qualifying period.

1.42 The committee also notes that item 8 listed in the Bill would provide that other cancers prescribed in the future would also be governed by the provisions established by this Bill.<sup>21</sup>

1.43 These qualifying periods are a conservative but certain benchmark for the latency periods for various cancers. The committee understands that not all firefighters who develop cancer will be captured by the legislation due to these qualifying requirements. They are, however, necessary in order to create a culture of acceptance and certainty for firefighters, employers and insurers.<sup>22</sup>

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20 Mr Craig Sidebottom, Slater and Gordon Lawyers, *Proof Committee Hansard*, 2 September 2011, p. 16.

21 Slater & Gordon Lawyers, *Submission 14*, p. 4.

22 For more on qualifying periods see *Proof Committee Hansard*, 2 September 2011, pp 8–9.



# CHAPTER 2

## The science

2.1 The science underpinning this legislation is pivotal to its justification. The committee received as evidence a large amount of the research that has been conducted into the link between firefighting and cancer. These studies were used to inform this report and are all publicly available.<sup>1</sup> Given the quantity and quality of evidence presented, the committee is confident that a link between firefighting and an increased incidence of certain cancers has been demonstrated beyond doubt.

### International studies

2.2 The health consequences of firefighting have attracted substantial academic research due to the occupational risks firefighters are exposed to. Studies have progressively become more sophisticated. The committee was informed that policymakers are now able to access several large-scale studies which conclusively show that a link exists between firefighting and cancer.<sup>2</sup>

It has been stated that firefighting is the most studied occupation in the world when it comes to cancer. There are literally dozens of major studies from around the world spanning over twenty years and they have made a definitive connection between firefighting and elevated cancer risk.<sup>3</sup>

2.3 One of these studies, commissioned by the Canadian province of Manitoba in 2002, looked at evidence gathered from 1994 to 2002. Led by Tee L. Guidotti, the study analysed research conducted worldwide looking at firefighters and five specific types of cancer: brain, bladder, kidney, non-Hodgkin's lymphoma and leukaemia. Processing enormous volumes of information, the researchers concluded that a firm link exists between firefighting and these primary-site cancers. In his report to the Workers Compensation Board of Manitoba, Guidotti stated:

The evidence available since 1994 suggests it is reasonable given the available scientific evidence to adopt a policy of presumption for brain cancer, bladder cancer, kidney cancer, non-Hodgkin's lymphoma (lymphatic cancer) and leukaemia (hematopoietic cancer) for claims associated with occupation as a firefighter.<sup>4</sup>

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1 See *Submission 1 Attachments*.

2 Mr Alex Forrest, *Proof Committee Hansard*, 9 August 2011, p. 2.

3 Mr Alex Forrest, *Submission 1*, p. 6.

4 Tee L. Guidotti and David F. Goldsmith, 'Report to the Workers Compensation Board of Manitoba on the Association Between Selected Cancers and the Occupation of Firefighter,' *Submission 1 Attachment 5*, p. 26.

2.4 The conclusions were used to inform Manitoba's presumptive legislation, the first of its kind in the world, and subsequent presumptive legislation in other jurisdictions.<sup>5</sup>

2.5 Other studies have confirmed a link between more than just the abovementioned cancers and firefighting. Bates *et al* conducted a retrospective cohort study of mortality and cancer in professional New Zealand firefighters in 2000, following a cluster of testicular cancers detected in Wellington firefighters in the 1980s. They looked at the incidence of testicular cancer in a cohort of firefighters and compared it to the incidence among the general population, using data obtained from the New Zealand Health Information Service (NZHIS). The committee was told that the results of the Bates study:

...put the scientific world on its heels. They found that the level of testicular cancer for New Zealand firefighters—I believe they looked at 4800 New Zealand firefighters within about three decades—was upwards of five times that of the general population.<sup>6</sup>

2.6 Mr Alex Forrest, President of United Fire Fighters of Winnipeg and Canadian Trustee of the International Association of Fire Fighters, told the committee:

When this study came out I read it and said: 'Five times the level—it just cannot be true.' Almost immediately different epidemiologists around the world took on the challenge of discrediting this study out of New Zealand. A gentleman by the name of Jockel out of Germany looked at all firefighters in Germany. What he found surprised him. His study almost exactly replicated the results—the rate of testicular cancer in New Zealand was the same as the rate in Germany. That just shows you the global aspect of this.<sup>7</sup>

2.7 Another large meta-study confirmed these results in 2006. Researchers led by Grace LeMasters '...looked at 110 000 firefighters and replicated the rate of testicular cancer....You have three studies—one from New Zealand, one from Germany and one from the United States—all showing the same rate of cancer.'<sup>8</sup>

2.8 The LeMasters study was commissioned by the Department of Environmental Health at the University of Cincinnati college of Medicine and is the largest study of its kind finalised to date. It looked at 32 other studies which addressed the cancer risk to firefighters who are routinely exposed to harmful substances such as lead, cadmium, uranium, chemical substances, harmful minerals and 'various gases that

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5 Since then and following further research Manitoba has expanded its list of recognised occupational cancers for firefighters from five to fourteen.

6 Mr Alex Forrest, *Proof Committee Hansard*, 9 August 2011, p. 2.

7 Mr Alex Forrest, *Proof Committee Hansard*, 9 August 2011, p. 3.

8 Mr Alex Forrest, *Proof Committee Hansard*, 9 August 2011, p. 3.

may have acute, toxic effects.<sup>9</sup> The LeMasters study found '...an elevated metarerelative risk' of certain cancers among firefighters.<sup>10</sup>

2.9 Studies conducted in the years since Manitoba first introduced presumptive legislation in 2002 have led that province to expand the number of cancers its legislation covers from five to 14.<sup>11</sup>

2.10 The committee heard that most overseas jurisdictions with similar legislation in place have moved substantially beyond the five cancers covered by Manitoba's initial legislation in 2002 and those listed by the proposed Bill. Today, with the benefit of a large volume of scientific research, every province in Canada is moving towards covering 14 cancers.<sup>12</sup>

2.11 This increase in the number of cancers covered has been driven by growing scientific evidence over the past decade, with lung cancer being a strong example of how legislation has progressed:

...[T]here was a major study done out of British Columbia by Tee Guidotti which looked at lung cancer. Once you take out the factor of smoking, firefighters had a risk of lung cancer three or four times as high as the general population. So, within a few months of that study, we saw the provinces of first Manitoba and then Alberta, British Columbia and Saskatchewan add lung cancer in nonsmokers. Again, that shows the specific nature and narrow scope of the legislation, but it also shows that science really drives this more than anything.<sup>13</sup>

### *Scientific consensus*

2.12 A submission from the ACT Chief Minister and Cabinet Directorate argued that a lack of scientific consensus exists on this issue among researchers and clinicians, posing challenges to this Bill.<sup>14</sup>

2.13 This view does not, however, appear to be supported by evidence received by the committee, nor was it expressed by representatives of the ACT Government subsequently. Mr Andrew Kefford, Deputy Director-General of the ACT Chief Minister and Cabinet Directorate, confirmed that a link between firefighting and cancer is recognised, explaining that he was not in a position to ascertain the strength of the scientific link:

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9 Grace LeMasters et al, 'Cancer Risk Among Firefighters: A Review and Meta-analysis of 32 studies,' *Submission 1 Attachment 7*, p. 1189.

10 Grace LeMasters et al, 'Cancer Risk Among Firefighters: A Review and Meta-analysis of 32 studies,' *Submission 1 Attachment 7*, p. 1189.

11 See <http://news.gov.mb.ca/news/index.html?item=10328> (accessed 9 September 2011).

12 Mr Alex Forrest, *Proof Committee Hansard*, 2 September 2011, p. 6.

13 Mr Alex Forrest, *Proof Committee Hansard*, 2 September 2011, p. 7.

14 ACT Chief Minister and Cabinet Directorate, *Submission 24*, p. 2.

I do not think anyone is contesting that there is a link in the exposure of firefighters to smoke for at least the increased risk of contracting cancer later.

...

But whether that is absolute or somewhere in between is not something in which I am in a position to comment. That is not my area of expertise.<sup>15</sup>

2.14 In the absence of clear evidence before the committee refuting the causal link between cancer and firefighting as defined by this Bill, the committee is satisfied that the science underpinning this legislation is sound.

### *Committee view*

2.15 The committee is confident in the quality of the studies it has seen and considers them to be compelling evidence in support of this Bill.

2.16 The committee emphasises that, as outlined in Chapter 1 of this report, claims under the proposed legislation would be rebuttable. This reflects the fact that science tells us that if a firefighter with a certain number of years of service develops cancer, that cancer is *most likely* to be caused by occupational exposure to carcinogens. Not *definitely* caused by occupational exposure, but most likely. In that light, any potential lack of absolute scientific consensus—which is incidentally absent in most fields of study—becomes immaterial:

Adjudication under workers' compensation requires an examination of the weight of evidence, not scientific certainty.<sup>16</sup>

2.17 The committee also notes that the body of scientific evidence has expanded since presumptive legislation was first introduced to cover five cancers in Canada in 2002. Researchers have since demonstrated that firefighters are at risk of a greater range of occupational cancers.

2.18 The committee is concerned that, even if passed, the proposed legislation would only serve to bring Australian commonwealth law into line with outdated jurisprudence. Considering that similar legislation has been in place overseas for nearly a decade, and has in fact been strengthened to cover more cancers as a result of growing scientific evidence, the committee would prefer to see Australia enact legislation in step with the most advanced jurisprudence available. The committee sees no reason to ignore scientific evidence demonstrating a link between firefighting as an occupation and a greater number of cancers than the seven listed by this Bill.

## **Recommendation 1**

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15 Mr Andrew Kefford, Deputy Director-General, Chief Minister and Cabinet Directorate, *Proof Committee Hansard*, 23 August 2011, pp 7–8.

16 Tee L. Guidotti, 'Evaluating Causation for Occupational Cancer Among Firefighters: Report to the Workers' Compensation Board of Manitoba,' *Submission 1, Attachment 4*, p. 52.

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**2.19 The committee recommends that the types of cancer listed by the proposed Bill be expanded to include multiple myeloma, primary site lung cancer in non-smokers, primary site prostate, ureter, colorectal and oesophageal cancers.**

### **The healthy worker effect**

2.20 Studies looking at firefighters and occupational disease also highlight the impact of what is known as the 'healthy worker effect'. The phenomenon is found across scientific literature and describes the protective effect of above-average health status on morbidity and mortality levels among groups who are otherwise at elevated risk of illness.

2.21 In the case of firefighters, the impact of the healthy worker effect means that their health and fitness levels, which are markedly higher on average than those of the general population, may protect them from diseases—including cancer—to a certain extent. In turn this suggests that were firefighters' health and fitness levels the same as those of the rest of the community, given their occupational exposure to carcinogens, they would suffer from cancers at a far greater rate than is currently the case.

2.22 It also means that the relatively high rates of certain types of cancers among firefighters are still lower than the rates we would see among the general population were the latter regularly subjected to similar carcinogenic environments.

2.23 The healthy worker effect therefore may mask the true level of risk firefighters are exposed to:

One would expect the morbidity and mortality rates to be lower among firefighters than in the general population containing people who are ill, infirm and generally not suited for fire service.

...

Because of this, a study may show no difference in morbidity or mortality rates between firefighter and the general population when, in reality, the firefighters may be sustaining greater illness and death than would be expected in a similar healthy group. Additionally, only healthy firefighters stay on the job. Those who become ill may leave the fire service without documented disability before retirement. Others may leave seemingly healthy, only to suffer the long-term effects long after their association with the fire service has ended.<sup>17</sup>

2.24 The effect has been observed where specific cancers, such as, for example, colon cancer, are concerned. Evidence exists suggesting that physical fitness and activity should protect individuals from certain types of cancer. This does not appear to be the case for firefighters:

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17 Michael Smith, Deputy Chief Officer, South Australian Metropolitan Fire Service, *Submission 13*, p. 5.

Despite the reports of a consistent inverse relationship found in other studies between physical activity and risk of colon cancer...we observed an increased risk of colon cancer among Philadelphia firefighters, suggesting factors exist that negate the protection that might be expected from the increased physical activity.<sup>18</sup>

2.25 Mr Forrest referred in his evidence to studies which concluded that:

...if firefighters never fought a fire, the mortality and morbidity rates for their particular health group would probably be anywhere from 60 to 70 per cent of that for the general population.<sup>19</sup>

2.26 Mr Forrest concluded that studies looking at cancer risk among firefighters were in all likelihood conservative in their conclusions due to the healthy worker effect.<sup>20</sup>

### Exposure and protection

2.27 As outlined, studies and meta-studies conducted around the world, including in Australia in the 1980s, demonstrate that certain types of cancer are caused by the release of carcinogens from combusting materials in structure fires. These known carcinogens can include benzene, styrene, chloroform and formaldehyde, and are absorbed by firefighters through the skin or by way of inhalation.<sup>21</sup>

2.28 Submissions to this inquiry discussed the protection available to firefighters through the world-class safety gear and clothing Australian firefighters utilise.<sup>22</sup> The committee heard that this protective gear, although consistent with all national and international safety regulations, cannot and does not form an impenetrable barrier between firefighters and the toxins they work amidst.

### Toxins

2.29 Mr Brian Whittaker, Commander of the Hazardous Materials (HAZMAT) Scientific Unit of the Metropolitan Fire Brigade, Melbourne, provided the committee with extensive evidence based on his expertise in HAZMAT response and public safety. Mr Whittaker concluded the following concerning the risk to firefighters:

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18 Dalsu Barris *et al*, 'Cohort Mortality Study of Philadelphia Firefighters', *American Journal of Industrial Medicine*, vol. 39, p. 723.

19 Mr Alex Forrest, *Proof Committee Hansard*, 9 August 2011, p. 4.

20 Mr Alex Forrest, *Proof Committee Hansard*, 9 August 2011, p. 4.

21 Thomas Fabian *et al*, 'Firefighter Exposure to Smoke Particulates,' (Final Report) 1 April 2010, including Table 3-4 Effluent gases detected in combustion of material-level test samples, Submission 19, Attachment 10 and Appendix A.

22 See for example Mr Brian Whittaker, *Submission 16*; Mr Philip Taylor, *Submission 17*; United Firefighters Union of Australia, *Submission 19*.

Their workplace is an uncontrolled environment where safety controls cannot eliminate all hazardous products encountered. Risk exposure to various toxic gases, vapours and particulate matter found in fire smoke does exist. These products can be carcinogenic and cause irritation, incapacitation, systemic toxicity and asphyxiation. The effects from exposure to the above products can be both acute and chronic.

Many studies have concluded that the combustion or pyrolysis (heating) of general household materials can generate many carcinogenic products. The prediction of combustion products is a complex area and there is potential for generation of a huge range of products depending on the nature of the fire and the conditions of burning.<sup>23</sup>

2.30 Most operational activities undertaken by urban firefighters are structural and non-structural fire incidents. Car fires, although technically considered non-structural, produce toxic chemicals rivalling those found in structure fires. This, the committee heard, is due to the prevalence of plastic components found in cars.<sup>24</sup>

2.31 Unsurprisingly, even ordinary houses and household products release toxic chemicals when they burn.

It is estimated there are tens of thousands of toxins and chemicals in the average household fire. Fabrics, furniture and construction materials give off a range of toxic gasses when burning. These toxins include acetic acid, phenol, formaldehyde, benzene, styrene, ammonia, carbon monoxide and cyanide. In a fire, the combination of these chemicals increases the toxicity significantly.<sup>25</sup>

2.32 The committee heard that although all fires have individual characteristics, there are a number of common toxic chemicals which may be present in most fire effluent:

- Polycyclic Aromatic Hydrocarbons (PAHs): naphthalene, benzo[a]pyrene;
- Irritant gasses: formaldehyde, acrolein, oxides of nitrogen; and
- Asphyxiant gasses: carbon monoxide, hydrogen cyanide.

2.33 Many of these are either known or suspected carcinogens. PAHs, for instance, are substances found in particles of soot and linked to certain types of cancer.<sup>26</sup> As far

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23 Mr Brian Whittaker, *Submission 16*, p. 1.



back as the year 1775, an increased rate of cancer among chimneysweeps routinely exposed to soot had already been reported.<sup>27</sup>

### *Smoke*

2.34 Smoke is an aerosol consisting of liquid or solid particles dispersed in a gaseous medium. This gaseous medium consists largely of toxic gases.<sup>28</sup>

2.35 The toxicity of these gases has been rising with modernisation of industry practices, meaning that the modern environment presents greater hazards to firefighters than their colleagues in past years. This is partly due to changes made by the construction industry, namely the shift away from natural materials such as wood to lighter construction materials that feature synthetics and petroleum-based materials:

These materials ignite and burn 2–3 times hotter and faster than conventional materials and when heated, emit a gas or smoke that will also ignite 2–3 times faster and burn 2–3 times hotter.<sup>29</sup>

2.36 Synthetic materials used extensively in commercial and residential properties include plastics, polymers such as styrofoam and polyurethane foam and nylons. Combustion has a marked effect on these synthetics and the smoke they produce when burning. They are commonly carbon based and bonded with nitrogen, sulphur, hydrogen and chlorine atoms. The increased speed at which they ignite and burn helps in the speedy creation of a toxic environment.<sup>30</sup>

2.37 It is this growing prevalence of synthetic materials that is an enormous cause for concern:

Chemicals are highly pervasive in the modern world. Since World War II, astronomic increases in the variety and production volumes of synthetic chemicals have occurred. Today more than 70 000 distinct chemicals are used commercially in the United States and are registered with the U.S. Environmental Protection Agency. Approximately 1000 new chemicals are registered each year. These chemicals are combined into more than 7 million mixtures, formulations and blends that are found in homes, public buildings and workplaces across the United States.

Testing of chemicals for their carcinogenic and other toxic effects has not kept pace with chemical production. Despite decades of concern about the toxic effects of chemical substances, the toxic effects of most of the chemicals currently in commercial use have never been evaluated..The absence of toxicity data on the majority of chemicals in commercial use means that firefighters are exposed on a daily basis to chemicals with unknown effects. It is quite likely, therefore that in addition to their

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27 'Smoke', Vol. 2, 2009, *Submission 16, Attachment 1*, p. 1.

28 'Smoke', Vol. 2, 2009, *Submission 16, Attachment 1*, p. 1.

29 'Smoke', Vol. 2, 2009, *Submission 16, Attachment 1*, p. 1.

30 'Smoke', Vol. 2, 2009, *Submission 16, Attachment 1*, p. 3.



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exposures to known carcinogens, firefighters experience exposures to carcinogenic chemicals whose cancer-causing potential has not yet been identified.<sup>31</sup>

### **Protective clothing and equipment**

2.38 The committee heard that occupational environments involving fire inherently preclude the design of personal protective clothing (PPC) that would provide an impermeable physical barrier between firefighters and the toxic smoke to which they are exposed.

2.39 Nevertheless, firefighters work hard to mitigate and eliminate workplace hazards in an emergency situation. Hazards are mitigated through a process known as the Hierarchy of Controls, which includes a range of options:

- Elimination of hazard;
- Substitution of hazard;
- Isolation of hazard;
- Engineering controls;
- Administrative controls; and
- Personal protective clothing.

2.40 The key principle of the hierarchy is to try and eliminate hazards at their source:

In regards to the 'Hierarchy of Controls' the core activity of firefighters is to eliminate, substitute and isolate hazards. This is routinely achieved by the use of engineering controls (equipment), administrative controls (skills and operational protocols) and PPC/E [personal protective clothing and equipment]. However with the inherent nature of fire fighting it is impossible to eliminate all hazards.<sup>32</sup>

2.41 As all hazards cannot be eliminated or isolated, engineering and administrative controls, as well as PPC, remain the principal hazard control mechanisms available. These are far less reliable methods of hazard mitigation, are '...more costly and require more work to ensure they are maintained.'<sup>33</sup>

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31 Philip J. Landrigan *et al*, 'Occupational Cancer in New York City Firefighters,' *Submission 1 Attachment 6*, p. 3.

32 Mr Brian Whittaker, *Submission 16*, p. 2.

33 Mr Philip Taylor, *Submission 17*, p. 3.

2.42 Respiratory equipment available to firefighters can also help eliminate inhalation as a source of exposure or contamination. Protective clothing, however, is limited in its capacity to mitigate contamination, so hazards are managed rather than eliminated through its use.

2.43 Managing hazards is achieved through standards for protective equipment set by the National Fire Protection Association (NFPA):

- Level A: Fully encapsulating gas tight suit with breathing apparatus (BA);
- Level B: Chemical splash suit (protection from liquids and solids) with BA;
- Level C: Chemical splash suit (protection from liquids and solids) with respirator; and
- Level D: Structural firefighting ensemble with breathing apparatus.<sup>34</sup>

2.44 Levels of protection are chosen to be fit for purpose. Levels A, B and C offer protection for incidents which involve hazardous materials but not fire or risk of fire. Therefore, Level A protection is suitable, for example, when firefighters attend an incident involving a chemical spill. The kind of protection required could change if the chemical spill involved fire or if detection equipment indicated a flammable environment.

2.45 In incidents involving fire or risk of fire, Level D protection is designed to offer the best possible protection. However, although it protects firefighters in environments involving fire, it does not offer fully encapsulated protection as provided by Level A:

Structural fire fighting ensemble has limited protection from gases, vapours and particulate matter due to the requirement and necessity to have a compromise between protection from radiated heat exposure and the release of metabolic heat build up. In short the breathability is in effect a hazard to firefighters that cannot be eliminated.<sup>35</sup>

### ***Breathability***

2.46 An average structure fire can expose firefighters to temperatures approaching 1000 degrees Celsius.<sup>36</sup> This means that the protective clothing firefighters wear in fire incidents must be able to breathe in order for them to be able to operate in these extreme temperatures. If the clothing did not breathe, firefighters would suffer heat stress and could quickly perish from metabolic heat buildup damaging their internal organs.

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34 Mr Brian Whittaker, *Submission 16*, p. 2.

35 Mr Brian Whittaker, *Submission 16*, p. 3.

36 Mr Philip Taylor, *Submission 17*, p. 2.

2.47 This requirement for breathability in protective clothing prevents firefighters from wearing fully encapsulated suits designed to seal all routes of chemical entry. The protective clothing they wear when fighting fires protects them from flames, but leaves them exposed to toxins through inhalation or absorption through eyes, skin, or wounds.<sup>37</sup>

2.48 Therefore, the very nature of the environment firefighters operate in prevents the design of protective clothing and equipment which could offer complete protection and isolation from toxic smoke.

### ***'Flash-over' and response time***

2.49 To minimise loss of life, property damage and interruption to business, '...fire services mandate a quick response by applying standards for their firefighters to respond to emergencies.'<sup>38</sup>

2.50 This response time standard is considered crucial:

Underpinning fire services response time standards is scientific research that dictates that a fire must be suppressed within five to 10 minutes of ignition. The physical characteristics of fire cause the temperature in a building to rise extremely rapidly, and a sudden and dramatic simultaneous ignition of most combustible materials and gases is called flash-over. The time required for flash-over to occur varies according to building construction and furnishing materials and usage. The fire spreads quickly once flash-over has occurred. In order to maximise the potential of saving life and minimize damage to property, firefighters must enter the building to commence suppression activities to avoid flash-over. In short, firefighters must enter the toxic environment...It is not an option for a firefighter to delay entering a structure to commence rescue operations and suppression activities.<sup>39</sup>

### ***Committee view***

2.51 The committee understands that firefighters work in uncontrolled environments which make it necessary for their protective gear to breathe, therefore leaving them vulnerable to toxins and carcinogens.

On the weight of considerable evidence supplied to the committee supporting a likely causal link between firefighting and certain cancers, as well as the understanding that claims for compensation would be legally contestable, the committee is confident that rebuttable presumption is a solid—and fair—foundation for workers' compensation policy for career firefighters.

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37 Mr Brian Whittaker, *Submission 16*, p. 3.

38 United Firefighters Union of Australia, *Submission 19*, p. 6.

39 United Firefighters Union of Australia, *Submission 19*, p. 7.



# CHAPTER 3

## Key issues

### Burden of proof

3.1 Firefighters who are killed or injured attending a fire incident are given compensation for work-related injuries. However, firefighters who develop cancer and believe their illness to be work-related currently face substantial obstacles to seeking compensation.

3.2 The committee was informed that, at present, any attempt to obtain compensation requires firefighters to undertake adversarial, costly and often protracted legal proceedings to establish:

- a) The link between firefighting and cancer; and
- b) Causation between a *specific* fire incident and their illness.

3.3 The United Firefighters Union of Australia (UFUA) informed the committee that medical practitioners generally advise firefighters with cancer to minimise stress and focus on their cancer treatment.<sup>1</sup> Many firefighters, as the committee heard from personal accounts relayed in the next chapter, fund their own leave from work and even their treatment. Their families cannot access compensation in the event that they die.<sup>2</sup>

3.4 As a result, the emotional and financial costs of litigation involved mean that not many firefighters who develop cancer seek to access any entitlement or compensation:

These transactional costs and the potential stress and delay often act as a disincentive for firefighters with cancer to pursue their proper entitlements. I myself have seen firsthand several firefighters with potential claims discouraged from pursuing those claims for these reasons. Often the shock and trauma of a cancer diagnosis and subsequent treatment places a great strain on those affected and their families. The threat of litigation is often overwhelming and the need to focus on treatment and improving health is often paramount. In this way, the scheme can sometimes be as confronting as the injury.

The introduction of presumptive legislation will therefore lead to greater transactional efficiency. It will remove some of the emotional and financial

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1 United Firefighters Union of Australia, *Submission 19*, p. 8.

2 United Firefighters Union of Australia, *Submission 19*, p. 8.

hurdles facing workers at the most vulnerable times in their lives. This in turn will improve client satisfaction with the scheme and hopefully drive down litigation costs.<sup>3</sup>

3.5 Those who would pursue compensation face considerable litigation costs. Representatives from Slater and Gordon Lawyers informed the committee that presumptive legislation in other jurisdictions often results in a reduction in litigation:

The presence of the rebuttable presumption means that it is open to insurers to still defend those claims where the cause of the cancer may be in question. However, I have certainly seen it in the proclaimed diseases provisions within the Accident Compensation Act in Victoria, where it does create more of a culture of acceptance of the claim rather than disputation. To give you an example, it might be the occurrence of Q fever amongst abattoir workers. Rather than having a protracted legal argument as to whether that disease has been caused by that type of employment, I have noticed that where that has occurred here it has been more readily accepted. That is to be applauded. It means that we are putting the resources into the appropriate places; they are not going to be expended on litigation. In litigation it is not only the cost; it is the emotional toll too. For workers who are quite ill and who quite often have a battle for their lives, the emotional toll of going to see doctor upon doctor for independent opinion or going to see a lawyer or going to court to give evidence can be quite stressful. Those people are, I guess, discouraged from pursuing that and sometimes will relinquish what their proper entitlement might otherwise be. So when we speak of these amendments not creating a new entitlement, it does not, but it does make it more efficient and more readily available for those who perhaps are most deserving of our support.<sup>4</sup>

### The SRC Act

3.6 The Safety, Rehabilitation and Compensation Act (the SRC Act) sets up the framework for workers' compensation and rehabilitation for the Government's Comcare<sup>5</sup> scheme. The Department of Education, Employment and Workplace Relations provided the following on the Act:

It establishes a fully funded premium based system and a licensed self-insurance based system of compensation and rehabilitation for employees who are injured in the course of their employment. The scheme covers approximately 211,000 Australian and ACT government employees and approximately 163,000 employees of self-insured licensees (as of 30 June 2010).

It provides a comprehensive benefit structure that includes:

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3 Mr Craig Sidebottom, Slater and Gordon Lawyers, *Proof Committee Hansard*, 2 September 2011, p. 15.

4 Mr Craig Sidebottom, Slater and Gordon Lawyers, *Proof Committee Hansard*, 2 September 2011, p. 19.

5 For more on Comcare see: <http://www.comcare.gov.au/> (accessed 29 August 2011).

- the payment of the reasonable cost of medical treatment;
- income replacement for periods of incapacity for work;
- payment of a lump sum for permanent impairment; and
- payment for rehabilitation programs.

In general, access to benefits under the SRC Act depends upon whether or not the injury, illness or disease can be demonstrated, on the balance of probabilities, to be work related.<sup>6</sup>

3.7 'Disease' is defined by the SRC Act as an ailment suffered by an employee that was contributed to by employment:

The way that scheme works is that there is an ILO [International Labour Organisation] list of occupational diseases. There is an expert panel that assesses exposure and likelihood of causation. Once a disease is on that list, under the provisions of the act as it applies, if—to take a hypothetical—one of our firefighters were to acquire a disease to which these deeming provisions apply, then that would bring into effect the workers compensation arrangements under the act.<sup>7</sup>

### ***The ILO list of occupational diseases***

3.8 All Australian jurisdictions except Queensland already include in their respective workers' compensation legislation lists of biological agents and chemicals with known links to certain diseases. These, including those listed under the SRC Act, are all based on the International Labour Organisation's (ILO) List of Occupational Diseases.<sup>8</sup>

3.9 The ILO list was created following the Workmen's Compensation (Occupational Diseases) Convention (Revised) 1934. Australia ratified this convention in 1959. The diseases included in the ILO's list adhere to set criteria:

- (i) there is a causal relationship with a specific agent, exposure or work process;
- (ii) they occur in connection with the work environment and/or in specific occupations;
- (iii) they occur among groups of persons concerned with a frequency which exceeds the average incidence within the rest of the population; and
- (iv) there is scientific evidence of a clearly defined pattern of disease following exposure and plausibility of cause.<sup>9</sup>

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6 Department of Education, Employment and Workplace Relations, *Submission 25*, pp 4–5.

7 Mr Andrew Kefford, Deputy Director-General, Chief Minister and Cabinet Directorate, *Proof Committee Hansard*, 23 August 2011, p. 2.

8 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 7.

9 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 8.

3.10 Although most Australian jurisdictions list some of the toxins cited by the ILO's list, not all have updated their respective lists of deemed diseases to reflect reviews and updates made by the ILO.<sup>10</sup>

3.11 Furthermore, the committee heard that the list of deemed diseases in the SRC Act, which is based on the ILO list, does not in fact include all the cancers listed by the proposed Bill:

Advice from Comcare is that their preliminary research—noting that that research has not been conducted through a medical or scientific expert—indicates that the existing list of declared diseases that can be caused by exposure to relevant toxins would encompass certain cancers but may not encompass all cancers listed in the firefighters bill. Comcare have further advised that this would continue to be the case even if the current list of declared diseases and toxins under the SRC Act is updated to bring it into line with the current ILO list of occupational diseases.<sup>11</sup>

***Subsection 7(1) of the SRC Act***

3.12 Subsection 7(1) of the Act provides that:

Where:

(a) an employee has suffered, or is suffering, from a disease or the death of an employee results from a disease;

(b) the disease is of a kind specified by the Minister, by legislative instrument, as a disease related to employment of a kind specified in the instrument; and

(c) the employee was, at any time before symptoms of the disease first became apparent, engaged by the Commonwealth or a licensed corporation in employment of that kind;

the employment in which the employee was so engaged shall, for the purposes of this Act, be taken to have contributed, to a significant degree, to the contraction of the disease, unless the contrary is established.<sup>12</sup>

3.13 That is, arguably the SRC Act already '...makes specific provision for what is intended by this Bill.'<sup>13</sup> It provides presumptions for certain prescribed occupational diseases, although, as seen in paragraph 3.11, not for all the cancers listed by this Bill.

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10 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 8.

11 Ms Michelle Baxter, General Manager, Workplace Relations Implementation and Safety Group, Department of Education, Employment and Workplace Relations, *Proof Committee Hansard*, 23 August 2011, p. 9. For the ILO list of occupational diseases see: [http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\\_150323/lang--en/index.htm](http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_150323/lang--en/index.htm) (accessed 12 September 2011).

12 Subsection 7(1), *Safety, Rehabilitation and Compensation Act 1988*.

13 Slater & Gordon Lawyers, *Submission 14*, p. 3.



3.14 It does so by enabling:

...the Minister to specify certain diseases are related to employment of a specific kind, unless the contrary can be proved. This presumes that certain diseases (specified by the Minister), that are contracted by an employee in a specific kind of employment, are related to that employment.<sup>14</sup>

3.15 The ACT Government argued that the above subsection of the SRC Act already provides adequate coverage for ACT firefighters. Mr Andrew Kefford, Deputy Director-General in the ACT's Chief Minister and Cabinet Directorate stated:

...all of those firefighters we have mentioned are covered in the course of their duties by the act to which this bill relates. We note in that context that that act provides a reverse onus of proof where a worker—and they are all classified as workers for this purpose—contracts a disease that is specified under the act. The act provides for compensation for all territory workers where diseases associated with particular toxin exposure in their employment on the balance of probabilities involved exposure to such toxins. This means in practice that, if a firefighter contracts cancer and that disease is linked to exposure to toxins during their employment, then it would more than likely be taken to be a compensable injury, although I note for the information of the committee that to the best we have been able to ascertain from the history there has not been a claim for occupational cancer amongst the territory's firefighters.<sup>15</sup>

3.16 Mr Kefford added that records of incident notifications kept by the ACT's fire services would help ACT firefighters obtain compensation:

If we were in the situation of someone who had been a firefighter in the ACT contracting cancer then part of the process that applies at the moment is that they would need to show that they had been a firefighter and exposed in the course of their work. There would be records that would permit them to do that.<sup>16</sup>

3.17 The records in question refer to the Australian Incident Reporting System (AIRS). The committee heard that AIRS data, however, is used to measure emergency response effectiveness and is not designed to collect information which could be reliably used in compensation claims:

AIRS is a mechanism for fire services to collect data as to the incidence of fire and is used to identify trends in fires and incidents. It is not a system designed to record the event from the firefighter's perspective, experience or exposure to toxins.<sup>17</sup>

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14 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 5.

15 Mr Andrew Kefford, Deputy Director-General, Chief Minister and Cabinet Directorate, *Proof Committee Hansard*, 23 August 2011, pp 1–2.

16 Mr Andrew Kefford, Deputy Director-General, Chief Minister and Cabinet Directorate, *Proof Committee Hansard*, 23 August 2011, p. 5.

17 United Firefighters Union of Australia, *Supplementary submission 19*, p. 6.

3.18 UFUA provided the committee with an excerpt from the Australasian Fire and Emergency Service Authorities Council (AFAC) website, which acknowledges the limitations of AIRS:

Some anomalies in the data exist due to separate development of the reporting systems by each fire service. It is not required that AIRS reports be supported by irrefutable evidence.<sup>18</sup>

3.19 UFUA expanded on the limitations of the AIRS system, citing the following drawbacks:

- The system does not record firefighters' exposure to toxins as a result of combustion at the fire scene;
- The exposure recorded refers to exposure from the fire scene—for example from spread to another structure—not exposure to the firefighter;
- The use of breathing apparatus and specialist protective equipment is recorded as the number of sets used without details about which firefighter used the equipment;
- The recording of respiratory protection and protective equipment is not compulsory for structure fires;
- It is not mandatory to fill each field in the system; this may mean that important information is at times omitted;
- The recorded data relies on what is visible to the officer at the scene; and
- Due to the short timeframes firefighters operate in, officers do not have adequate time to record precisely which toxins or carcinogens are present in the environment.<sup>19</sup>

3.20 Therefore the records available do not appear sufficiently reliable to form the basis of solid compensation claims.

### *Does the SRC Act provide adequate cover?*

3.21 The ACT Government's evidence that any ACT firefighters who wish to make a claim can already do so under subsection 7(1) of the SRC Act reaffirmed the position expressed by the ACT Government earlier in its submission:

The SRC Act already provides presumptions for prescribed occupational diseases.<sup>20</sup>

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18 Quoted in United Firefighters Union of Australia, *Supplementary submission 19*, p. 6.

19 For more detail on AIRS see appendices to United Firefighters Union of Australia, *Supplementary submission 19*.

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3.22 However, the same part of the above submission goes on to explain:

That is, the disease is deemed to be work-related if the worker's employment involved exposure to certain chemicals, toxins and biological agents.<sup>21</sup>

3.23 This means that ACT firefighters who develop cancer may technically seek and obtain compensation under the SRC Act as it stands. Importantly however, they still have to prove on the balance of probabilities:

- (i) That the disease (cancer) was caused by the exposure to the particular chemical or toxic compound; and
- (ii) That the employee was exposed to that particular chemical or toxic compound.<sup>22</sup>

3.24 Mr Steve Kibble of Comcare outlined for the committee the tests and process involved in determining claims under subsection 7(1) of the SRC Act as it stands:

When we determine claims under that subsection there are two evidentiary tests considered. The first one is disease of a kind—and I am referring to the legislation—and the second is employment of a kind, which involves exposure to a specified risk. For example, the notice of the deemed diseases provides coverage for occupational diseases caused by benzene, for those employees whose employment involves exposure to benzene.

With that example, firstly, it must be established that the disease is of a kind caused by benzene and the person who is making a decision about the claim would rely on specialist medical evidence or research that provides a scientific and medical link to the contraction of a kind of disease caused by benzene. Secondly, the delegate would rely upon the information provided on the claim form or obtain factual evidence from the employer and/or the employee to establish that the employee was engaged in a kind of employment involving exposure to the risk—that is, of benzene—before they contracted the disease and their employment involved exposure to the risk. For example, if a firefighter fought structural fires, therefore it can be taken that he or she had been exposed to benzene.<sup>23</sup>

3.25 However UFUA reminded the committee that:

Firefighters cannot prove 'exposure' to the particular chemicals or toxins at the specific fires or incidents they have attended. It is simply not possible or practicable for the detection of the numerous toxins firefighters are exposed to at each particular fire. This problem is exacerbated as the exposure can be over a long period of time at a number of fires/incidents and the cancers have various latency periods.

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20 ACT Government, Chief Minister and Cabinet, *Submission 24*, p. 2.

21 ACT Government, Chief Minister and Cabinet, *Submission 24*, p. 2.

22 United Firefighters Union of Australia, *Supplementary submission 19*, p. 4.

23 Mr Steve Kibble, Comcare, *Proof Committee Hansard*, 23 August 2011, p. 10.

Therefore, without being able to prove that exposure at any particular time in the employment, the firefighter fails to meet the test for the presumptive threshold as specified in section 7(1) [of the SRC Act]. The firefighter is left in the impossible position of having to prove the link of the cancer with their particular work as a firefighter.<sup>24</sup>

3.26 Asked how a firefighter could prove exposure under subsection 7(1) of the SRC Act as it stands, representatives of the ACT Government stated the following:

If we were in the situation of someone who had been a firefighter in the ACT contracting cancer then part of the process that applies at the moment is that they would need to show that they had been a firefighter and exposed in the course of their work. There would be records that would permit them to do that. I might come back to what you were saying before about knowledge of the provisions. I should say that safety generally and workers' safety generally in our fire services are things that are at the front of the government's mind. They are at the front of the minds of all of the people involved in it. So I am confident that any firefighter who contracted a disease or work injury that even might have been related to their work would know about the appropriate channels through which they should go to pursue their claim, whether they be a member of our ESA or a volunteer brigade.<sup>25</sup>

3.27 The onus, therefore, would still be on the sick firefighter to prove occupational exposure to carcinogens. In fact, given that cancer results from cumulative exposure, firefighters seeking compensation could be required to provide a trail of evidence on exposure going back a decade or more.

3.28 This, the committee understands, would be achievable only if, after every fire event, authorities conducted a thorough scientific analysis of chemicals present in the fire, and then provide each firefighter involved in the response with a detailed list of chemicals they were exposed to. The administrative burden and cost of such an endeavour would be prohibitive. Easing the extremely difficult task of proving the link between their work and their cancer goes, as outlined earlier in this report, to the very heart of the proposed legislation.

3.29 In addition, this question of proving exposure leads to the fine point of difference between the current SRC Act and amendments proposed by this Bill. The latter would not require firefighters battling cancer to go out of their way to prove exposure. It would assume exposure to carcinogens for firefighters with a set number of years of service.

3.30 Slater and Gordon Lawyers pointed to the out that the Bill does not represent a significant departure from the SRC Act, but rather a narrowing of its intentions:

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24 United Firefighters Union of Australia, *Supplementary submission 19*, p. 4.

25 Mr Andrew Kefford, Deputy Director-General, Chief Minister and Cabinet Directorate, Australian Capital Territory, *Proof Committee Hansard*, 23 August 2011, p. 5.

This Bill therefore represents an outcome of a type not only already specifically contemplated by the drafters of the current Section 7 [of the SRC Act], but is also narrower in application than that envisaged. It would be errant logic to conceive of this Bill as some new tipping point that will promote a flood of claims.<sup>26</sup>

3.31 The Slater and Gordon submission argued that the effect of the proposed Bill is limited to:

...shift[ing] the balance of an evidentiary burden away from a severely injured worker and their family at a time where that family is likely experiencing significant stress. It shifts this burden to a professional administrator who has ready access to the resources and expertise necessary to assess the merits of the situation. Indeed, it is in many ways the core business of this administrator to make such assessments. It does not deny the administrator any legal defence that it may otherwise consider appropriate to rely upon in the given circumstances.<sup>27</sup>

### *Committee view*

3.32 The committee recognises that subsection 7(1) of the SRC Act already allows for a presumption that employment contributed significantly to a listed disease. However, critically, the Act still requires proof of exposure to be established by the claimant before the presumption can take effect. A firefighter would have to:

1. suffer from a disease listed under the SRC Act (which appears not to include all the cancers covered by the proposed legislation);
2. show that their employment involved a risk of exposure to particular chemicals prior to the disease; and
3. prove a link between the chemical and disease in question.

3.33 The committee considers the SRC Act an inadequate mechanism to achieve the objectives of the current Bill because of the heavy evidentiary burden it places on firefighters with cancer.

3.34 The Bill being considered relies on scientific evidence and assumes an association between the length of occupation as a firefighter and certain cancers. If the Bill is passed, firefighters with these primary site cancers will only have to prove length of service.

3.35 The committee acknowledges the volume of evidence received—particularly that from Slater and Gordon Lawyers—pointing out that the ultimate effect of this Bill would be to merely shift, not scrap, the evidentiary burden. The committee recognises

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<sup>26</sup> Slater & Gordon Lawyers, *Submission 14*, p. 3.

<sup>27</sup> Slater & Gordon Lawyers, *Submission 14*, p. 3.

that the opportunity would still exist for employers and insurance agencies to overcome claims for compensation in cases where such claims were not warranted.

### Costs

3.36 Workers' compensation claims through Comcare are funded by premiums paid for by governments:

The way our scheme operates is that it is very much an experience based scheme. You may be aware of some of the state and territory workers compensation schemes which have some elements of an experience base in terms of some of the claims experience and performance of individual employers but because of the size of the schemes and the number of employers they quite often operate on an industry basis et cetera. But our scheme is very much an employer based experience, so the premium which is charged in each year is based on the actual claims experience of the individual employers as well as the overall costs of the scheme itself.<sup>28</sup>

3.37 The committee explored the possibility that the Bill could bring about significant increases in premiums by improving the ease with which firefighters can access compensation. However, based on overseas experience as well as the fact that the legislation would not provide for any new grounds to claim, the committee is of the view that there would be negligible impact on the Commonwealth or ACT budget.

3.38 For information on the cost impacts of similar presumptive legislation in other jurisdictions the committee considered evidence provided by the Fire Chief Ken Block of Edmonton Fire Rescue Services in Canada. Fire Chief Block informed the committee that the cost impact of presumptive legislation in Canada had been 'minimal if not negligible.'<sup>29</sup>

3.39 To illustrate the point, Fire Chief Block cited the example of the province of Alberta, Canada, for the committee. Alberta introduced presumptive legislation in 2003, starting with seven cancers listed. In 2005 the province added lung cancer in non-smokers to its list of covered cancers, then expanded the list in 2010–2011 to include another six cancers. In all, Alberta now covers 14 cancers in its presumptive legislation.

3.40 There are approximately 13 500 firefighters in Alberta, of which 3500 are full-time firefighters and 10 000 volunteer or part-time. Figures provided for the committee show that in the period 2006–2010 there were 19 occupational cancer claims with the Alberta Workers Compensation Board (WCB).<sup>30</sup>

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28 Mr Steve Kibble, Comcare, *Proof Committee Hansard*, 23 August 2011, p. 12.

29 Fire Chief Ken Block, *Proof Committee Hansard*, 2 September 2011, p. 3.

30 Fire Chief Ken Block, *Submission 26*, p. 6.

3.41 The committee heard that the total cost of the WCB—including all workplace injury and illness claims—to the Edmonton Fire Rescue Services budget is less than two per cent of its \$158 million recurrent operating budget:

Within the two per cent of the Edmonton Fire Rescue Services recurrent operating budget it is estimated that there would be a very small percentage of work related illness falling within presumptive legislation coverage. Again, that two per cent encompasses all of the work related injuries, not just cancer.

...

From 2003 the WCB cost for Edmonton Fire Rescue Services was \$916,347, increasing over a seven-year period to \$2,332,414 in 2010. To put that into perspective, that is the equivalent of a \$202,295 increase per annum in total for all claims, not just occupational cancer under WCB—and, again, all claims include the range of work related illnesses, such as back injuries, sprains, strains et cetera.<sup>31</sup>

3.42 The committee also heard that much of the increase in costs can be attributed to increased staffing levels, with the Edmonton fire department growing by approximately 15 per cent over the past decade.

3.43 Fire Chief Block discussed with the committee the 'immeasurable but beneficial' impacts of presumptive legislation in Edmonton, Alberta. Raised awareness of the correlation between firefighting and certain cancers has led to a proactive approach to health awareness through the Edmonton Fire Rescue Services Health and Wellness program, introduced in 2005. The program encourages firefighters to undergo regular, voluntary medical assessments, which have resulted in early detection of cancers and subsequently a much higher survival rate.<sup>32</sup>

Through early occupational cancer detection, there is transferring of costs between death benefits and issues such as lost time and medical claims. This is essentially a balancing and neutral costing, while detecting a cancer early and hopefully saving a firefighter, which is the right thing to do.<sup>33</sup>

3.44 Raised health awareness and a proactive approach to health and wellbeing have also resulted in a positive change in employee engagement and have helped Edmonton Fire Rescue Services with recruitment and retention.<sup>34</sup>

### *Committee view*

3.45 The committee notes the experience-based evidence provided by Fire Chief Block. The committee also notes the very small number of claims lodged in Alberta,

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31 Fire Chief Ken Block, *Proof Committee Hansard*, 2 September 2011, p. 3.

32 Fire Chief Ken Block, *Submission 26*, p. 7.

33 Fire Chief Ken Block, *Submission 26*, p. 7.

34 Fire Chief Ken Block, *Submission 26*, p. 7.



Canada, and has 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.

3.46 On the basis of this evidence, the committee is confident that the cost impact of the proposed legislation would be as insignificant in Australia as it has been elsewhere.

3.47 The committee also notes with great interest that presumptive legislation overseas has led to greater health awareness, earlier detection of cancers and consequently a higher survival rate. First and foremost this is positive in terms of the firefighters' lives saved. However, it also leads to a reduced number of death benefits needing to be paid.

### **Coverage of volunteer firefighters**

3.48 Some submissions sought clarification on which firefighters the Bill would cover.<sup>35</sup>

3.49 The proposed legislation does not expressly differentiate between volunteer and professional firefighters, but subsection 7(9) includes the following definition of being employment as a firefighter:

(9) for the purpose of subsection (8):

(a) an employee is taken to have been employed as a firefighter if firefighting duties made up a substantial portion of his or her duties; and

(b) an employee who was employed as a firefighter for several periods that add up to the qualifying period is taken to have been so employed for the qualifying period.<sup>36</sup>

3.50 This definition means that volunteer firefighters would not be covered by the legislation because firefighting does not comprise a substantial portion of their duties, nor would they be able to satisfy the requirements of the qualifying periods outlined in Chapter 1.

3.51 During the course of its inquiry the committee sought clarification as to why the proposed legislation did not seek to cover volunteers, who are covered in certain jurisdictions overseas. In response to its questions, the committee heard that the definition of volunteer firefighter differs between Australia and overseas:

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35 See for example ACT Department of the Chief Minister and Cabinet, *Submission 24*, p. 1.

36 Subsection 7(9), Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011.



The definition of 'volunteer' in Canada is different from the definition of 'volunteer' here. In Canada, there is no such thing as a person who gives their labour or their services for no remuneration. They are paid on-call or are part-time firefighters.<sup>37</sup>

### Cause of illness and period of employment

3.52 Subsection 7(8) of the proposed legislation states:

- (8) If an employee:
- (a) suffers a disease mentioned in the following table; and
  - (b) before the disease was first diagnosed, was employed as a firefighter for the qualifying period mentioned for that disease; and
  - (c) was exposed to the hazards of a fire scene during that period;
- the employment is taken to have been the dominant cause of the contraction of the disease, unless the contrary is established.

3.53 Slater and Gordon Lawyers questioned why subsection 7(8) of the Bill employs the term 'dominant' instead of 'significant' cause, since the threshold test for entitlement elsewhere in the SRC Act is that employment contributed to a disease to a 'significant' degree:

It is not clear why the term dominant has been selected. The threshold test for entitlement to compensation for disease under the Act is that employment has contributed to a significant degree. The threshold test for significance is less than for dominance, so the use of the higher test will not disadvantage workers who otherwise qualify.<sup>38</sup>

3.54 Slater and Gordon Lawyers also pointed out to the committee that section 7(9) of the Bill could result in unintended consequences. It currently states:

- (9) (b) an employee who was employed as a firefighter for several periods that add up to the qualifying period is taken to have been so employed for the qualifying period.<sup>39</sup>

3.55 The above subsection may risk being misinterpreted as not covering firefighters who have only accrued two, instead of 'several', periods of employment. Two periods and several periods can add up to the same number of years, each satisfying the required qualifying period.

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37 Mr Peter Marshall, National Secretary, United Firefighters Union of Australia, *Proof Committee Hansard*, 2 September 2011, p. 34.

38 Slater & Gordon Lawyers, *Submission 14*, p. 5.

39 Subsection 7(9)(b), Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011.

### *Committee view*

3.56 The committee agrees with the concerns expressed by Slater and Gordon Lawyers, and believes the reference to 'dominant' cause in the Bill should be revisited in order to preserve consistency within the SRC Act.

3.57 The committee also supports the view that the term 'several periods' of employment should be amended to 'more than one period' of employment.

### **Recommendation 2**

**3.58 The committee recommends that proposed subsection 7(8) of the Bill be amended to replace the term 'dominant' cause with 'significant' cause.**

### **Recommendation 3**

**3.59 The committee recommends that proposed subsection 7(9)(b) of the Bill be amended to replace the term 'several periods' with 'more than one period'.**

### **The case for non-rebuttable legislation**

3.60 The committee is aware that some submitters, such as the ACT Branch of UFUA, believe the Bill should go further and provide stronger presumption of occupational cancer possible for firefighters. This would require the legislation to be non-rebuttable.<sup>40</sup>

3.61 As already outlined, the Bill as it stands reverses the onus of proof from the individual to the employer or insurer, who can then rely on the rebuttable nature of this legislation to deny a firefighter's claim for compensation and have the case heard before the Administrative Appeals Tribunal or the Federal Court.<sup>41</sup> Making the presumption non-rebuttable would render it automatic and not provide employers and insurers with the opportunity to reject a weak or unfounded claim for compensation.

3.62 The committee is not aware of significant support for this alternative approach. Furthermore, this is not the approach taken by leading jurisdictions across Canada and the United States.

3.63 The Bill as it stands enjoys support from the overwhelming majority of submissions to this inquiry. This, it should be mentioned, includes support from the ACT Branch of UFUA, which represents the firefighters who would be directly affected by this Bill:

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40 See for example United Firefighters Union of Australia, ACT Branch, *Submission 18*, p. 5.

41 See United Firefighters Union of Australia, ACT Branch, *Submission 18*, p. 5.

The fact remains that whether it is one fire or one hundred fires, our compensation system should be designed in such a way that it protects firefighters, so that they can continue protecting Australian communities.<sup>42</sup>

3.64 The committee is satisfied that the proposed presumptive legislation should remain rebuttable.

*Committee view*

3.65 The committee understands that this legislation would not create a new right or entitlement, and would not bring about a flood of new claims. Nor would it fundamentally change the nature of the Australian compensatory system. Rather, it would shift the burden of proof from a sick individual to their employer or insurer, and only in defined cases founded on premises supported by scientific research.

3.66 The committee notes that the proposed legislation as it stands could lead to firefighters with two periods of service, which nonetheless add up to the qualifying period, being denied compensation. For this reason the committee has recommended amending subsection 7(9)(b) of the Bill to replace the term 'several periods' with 'more than one period'. Similarly, noting that the threshold test for significance is less than for dominance, the committee has recommended that subsection 7(8) be amended to maintain consistency throughout the SRC Act.

3.67 The committee is convinced that this legislation removes, at least for some firefighters, the unreasonable impediment to compensation that currently exists. It is, the committee believes, legislation which finally recognises the scientifically demonstrated link between firefighting as an occupation and certain forms of cancer. As stated in 2002 when the Canadian province of Manitoba was considering the introduction of such legislation:

A presumption assumes that, all other things being equal, most cases of a certain type of cancer will be associated with occupational exposure, even though it is not possible to determine which case is actually caused by the occupation. A presumption is a way of being inclusive in the acceptance of such claims given that it is not possible to distinguish among them.

...

A presumption is also appropriate when the condition is rare and there is a pattern or strong suggestion of strong association with an occupation that may be concealed by other factor that complicate interpretation of the risk estimate.<sup>43</sup>

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42 United Firefighters Union of Australia, ACT Branch, *Submission 18*, p. 5.

43 Tee L. Guidotti and David F. Goldsmith, 'Report to the Workers Compensation Board of Manitoba on the Association Between Selected Cancers and the Occupation of a Firefighter', 28 March 2002, p. 8, as quoted in United Firefighters Union of Australia, *Submission 19*, p. 10.

3.68 On the weight of evidence the committee believes presumptive legislation is the most appropriate protective policy response to recognise the personal risk that firefighters take in the course of their careers and the sacrifices some of them will make.

# CHAPTER 4

## Personal accounts

4.1 The committee heard that firefighters are, upon recruitment, within the top 5–10 percent of the general population in terms of physical health and fitness. Yet, within a few years of employment, firefighters are between 2 and 5 times more likely to develop one of the cancers listed in the Bill than the general population.<sup>1</sup>

4.2 Currently, as outlined earlier in this report, firefighters who develop cancer are required to prove—often through litigation—a causal link between the cancer and their work. The committee received extensive evidence about the hardship and stress this causes firefighters who are battling a serious disease. This Bill, the committee heard, would simply remove that hardship and stress and give firefighters a better chance at recovery.<sup>2</sup>

4.3 The committee received submissions and heard from a number of firefighters, and families of firefighters, whose lives have been changed by cancer. The committee again thanks them for taking the time to make submissions and give evidence. A few of their stories are outlined below.

### **Janet Reed**

4.4 Janet Reed's husband, Robert James Reed, had been a firefighter for 14 years when he was diagnosed with kidney cancer in 2008. He died ten months later, leaving behind a wife, two children and many friends in the firefighting community.

4.5 As a firefighter, the committee heard that Robert Reed was always conscious of safety. He was nevertheless exposed, as all firefighters are, to toxins which were beyond his ability to control:

In Rob's everyday work where he looked after people in our communities as a fire fighter, performing road crash rescues, confined space rescues, dealing with hazardous material spills and other work he was regularly exposed to toxins and risk. He was a safe and conscientious worker and he wore protective clothing and used special safety equipment but it did not prevent him from being exposed to all sorts of toxins and some of that exposure was cumulative throughout his career.<sup>3</sup>

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1 United Firefighters Union of Australia, *Submission 18*, p. 1; p. 21.

2 See United Firefighters Union of Australia, ACT Branch, *Submission 18*, p. 4.

3 Mrs Janet Reed, *Submission 20*, p. 1.

4.6 His widow, Janet Reed, told the committee of the difficult and stressful months of her husband's ultimately unsuccessful treatment:

The circumstances of Rob's treatment was extremely difficult emotionally and physically...In July Rob had routine testing 6 months after his surgery and a CT Scan revealed that the cancer had returned to his lymph nodes in his chest. Rob was hospitalised and had a biopsy which was complex procedure because his lung had to be collapsed to perform the biopsy, and the results confirmed that it was secondary cancer originating from the renal cell cancer. That diagnosis was dreadful and very stressful. Rob was then referred to an Oncologist and he commenced a course of chemotherapy treatment.<sup>4</sup>

4.7 Robert Reed's family remained hopeful for a positive outcome despite a series of hurdles and discouraging results:

Rob's health declined and the cancer spread to his brain. In September Rob had a course of radiotherapy treatment for 4 weeks to treat the cancer in his head and chest. I supported Rob through this terrible time and we were optimistic for a good outcome. Rob wanted to carry on as though it was "business as usual" to minimise the impact of his illness for everyone else.<sup>5</sup>

4.8 Shortly after this treatment, the family went on a short holiday to spend some quality time together. Within two weeks of the break Robert Reed was hospitalised with swelling on his brain. Janet Reed told the committee that her husband died three days later on 29 October 2009, their 21<sup>st</sup> wedding anniversary.

4.9 On 2 September 2011 Janet Reed attended one of the committee's hearings to tell the committee of the emotional and financial stress Robert Reed and his family had to undergo because Robert was forced to return to work for financial reasons:

I am here to ask you to carefully go through this presumption legislation and to consider it, because if this had been available to Rob and me when he had cancer it would have made our life easier. I am here for Rob. That is why I am here. And I believe that if Rob had not had to return to work after he had his operation—he had his kidney removed—after he thought that the cancer was all gone, I believe there would have been a lot less stress in our lives and maybe the lower stress would not have accelerated his cancer so quickly.<sup>6</sup>

4.10 Robert Reed and his family did not have ready access to compensation, and could not face having to go through lengthy and costly litigation to seek any sort of payment or support:

There was no compensation readily available to us and it was not something that we had strength to go and seek money for litigation of any kind when

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4 Mrs Janet Reed, *Submission 20*, p. 2.

5 Mrs Janet Reed, *Submission 20*, p. 2.

6 Mrs Janet Reed, *Proof Committee Hansard*, p. 20.

we were going through such a hard time especially when his cancer came back six months after he was diagnosed. The last thing that any person needs to do in that situation is to worry about seeking compensation when you are already worrying about how you are going to get through the cancer. That is why I think it is important for me to be here today to let you know that just having cancer alone is a struggle and the financial part is a bigger struggle again that you do not have the strength to fight.<sup>7</sup>

4.11 The committee thanks Janet Reed for her evidence, and acknowledges how difficult it must have been for her to attend the public hearing.

### **Dean Symmans**

4.12 The committee also took evidence from Mr Dean Symmans, a firefighter for 26 years. In April 2009 he was diagnosed with leukaemia, and has been undergoing treatment since that time. He is currently in remission, undergoing chemotherapy, monthly blood tests and bone marrow aspirate tests every three months.

4.13 He told the committee of his treatment:

Upon diagnosis I was given a 70 per cent survival. Treating doctors had less than two weeks to use chemotherapy drugs to place me into remission. Stationed in Albany 400km south of Perth, I was air lifted to Perth by Royal Flying Doctor to Sir Charles Gardner Hospital where chemotherapy and intravenous drugs were initiated.<sup>8</sup>

4.14 Being away from home for treatment meant that his family had to travel, at their own cost, to see him:

Over the next 6 months, I received 3 x monthly intravenous chemotherapy treatments in SCGH hospital. My wife and sons travelled regularly to visit me at my hospital bedside. This was obviously disruptive to family life, schooling and an expensive exercise. My wife had to reduce her hours of work and we relied heavily on friends to assist with childcare and transport.<sup>9</sup>

4.15 Mr Symmans had always been healthy, and had accrued many hours of unused sick leave during his time as a firefighter. He used over 1000 hours of sick leave during his treatment. He was told that, if he relapsed after treatment, he would need a stem cell transplant and more time off work.<sup>10</sup>

4.16 Having exhausted their resources, Dean Symmans and his family had to turn to his colleagues for help:

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7 Mrs Janet Reed, *Proof Committee Hansard*, p. 20.

8 Mr Dean Symmans, *Submission 23*, p. 2.

9 Mr Dean Symmans, *Submission 23*, p. 2.

10 Mr Dean Symmans, *Submission 23*, p. 2.

During my illness with leukaemia fire fighters and my Union rallied to support my family with monetary assistance to help cover the costs with travel and other expenses. Fire fighters maintained my family car and house in my absence over the initial 12 months. Albany fire fighters also travelled 400kms to visit me in hospital. Perth fire fighters sat with me bedside whilst treatment was administered.<sup>11</sup>

4.17 Today, like other cancer sufferers in remission, Mr Symmans now lives with the fear of a relapse:

My big fear was if I did not stay in remission—which I am at the moment, thankfully—I would need to have stem cell transplants. If that takes place it would further chew out sick leave and I would then have to fall onto a charity that the firefighters themselves have set up. It is a sick and death benefit fund. I was, as I said, trying to preserve what sick leave I had left so that I could battle through my treatment.<sup>12</sup>

4.18 He told the committee of the financial strain he and his wife faced during his illness, and the impact on their family and lifestyle:

In my case, being the main breadwinner, it was immense. During my illness my wife, who at that point was job sharing, had to cut back on those hours as well. I guess we were very grateful to her employer, who did the right thing and looked after her—offered her time off and supported her during my ordeal. I have the privilege here today to say how disappointed I was in the return-to-work system of my employer. All that was in place as far as return to work goes was an account-keeping process, which I probably come across as a little bit bitter with at the moment. All they wanted to know was how many hours I was working that day. The hours I did not work they were going to take off my remaining sick leave. That made me livid. I had worked for an organisation for such a long period of time and that was what they were offering me. I thought it was pretty ordinary.<sup>13</sup>

4.19 He added:

I went to the point of contacting my area manager and asking 'How the hell do you work this sort of thing?' It should not be pushed down to people in fire stations and their area managers to try to make the thing work. There should be something put in place. That, to me, is part of this process of getting presumptive legislation up so that I would not have to worry about how much sick leave I have and my family would be looked after.<sup>14</sup>

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11 Mr Dean Symmans, *Submission 23*, p. 3.

12 Mr Dean Symmans, *Proof Committee Hansard*, p. 22.

13 Mr Dean Symmans, *Proof Committee Hansard*, p. 23.

14 Mr Dean Symmans, *Proof Committee Hansard*, p. 23.



4.20 Although Dean Symmans believes he was exposed to iridium radiation, he informed the committee that he did not think he could confidently identify a single incident which had caused his leukaemia:

In 1991, I believe, I was probably exposed to radiation caused by iridium. There are ongoing diesel fume concerns at fire stations and on the fire ground. The leukaemia I have is believed to be caused by an exposure to a chemical or radiation, and benzene gets the green light there. I guess there has been an accumulation of carcinogens over 24 years. The more I look into things, the more I find things. I have only just learnt from a fellow firefighter that the firefighting foam we have been using over the years can be a carcinogen. A lady who is doing research into leukaemia contacted me one time and told me that a chemical called 2-butoxyethanol, I think it is, was in AFFF foam. I'm not a scientist; I did my own home research come home. She indicated that there is a carcinogen in firefighting foam. I don't know how I can nail it down to one specific thing.<sup>15</sup>

### **Scott Morrison**

4.21 Mr Scott Morrison is a leading firefighter with Melbourne's metropolitan fire brigade. He was diagnosed with non-Hodgkin's lymphoma in 2001:

My journey with cancer began 10 years ago. In August 2001 I was admitted into hospital as it was not known what was wrong with me. I was diagnosed with non-Hodgkin's lymphoma. I had large cell cancers which are considered aggressive. That was the start of a battle for my life that would span six years and is something I am still very vigilant and concerned about on a daily basis.<sup>16</sup>

4.22 On 11 September 2001 Scott Morrison began his chemotherapy treatment:

The date 11<sup>th</sup> September 2001 is a day of sadness and shock for firefighters as the New York Fire Department lost more than 300 firefighters in the terrorist attacks. For me that day also marked the first round of chemotherapy. I had six rounds of chemotherapy ending on the 24<sup>th</sup> December 2001. By that stage I had not even told my mother I had cancer as I thought the chemotherapy would be the end of it.<sup>17</sup>

4.23 Unfortunately, chemotherapy did not produce the results Mr Morrison had hoped for, and he had to undergo further rounds of the treatment. Due to ongoing chemotherapy and tests his veins collapsed and a fine tube had to be inserted into his body in order for the chemotherapy to continue:

Then I went back for more tests, and they showed that that had failed, so I had to have a stem cell transplant in February. In March 2002 I went through the procedure, and I was in hospital for eight days. I was returned

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15 Mr Dean Symmans, *Proof Committee Hansard*, 2 September 2011, p. 24.

16 Mr Scott Morrison, *Submission 7*, p. 2.

17 Mr Scott Morrison, *Submission 7*, p. 2.

home for four days because those four days could have been my last four days, but then I went back to the hospital for six weeks—I was in isolation. I finally got through that, and I was sent back for more tests. They said, 'You've still got something there near your left kidney,' and I had to go through six weeks' radiation. In between that, I spoke to the doctor. He said, 'If this doesn't work you're going to palliative care.'<sup>18</sup>

4.24 Fortunately, Mr Morrison responded to treatment and in 2002 went into remission for five years. He was re-diagnosed with non-Hodgkin's lymphoma in 2007, which was successfully treated with radiation therapy. The committee was shocked to hear that he had to rely on the generosity of his colleagues who gave up their own leave entitlements to allow him to take the necessary time off work:

I was lucky because my wife had her own dancing school. She spent the whole time at the hospital when I was there. I had a few hours of sick leave, but I was off for nearly 18 months. When I did run out of sick leave I was lucky enough to have great work mates who put their annual leave up for me so I would not lose money. I cannot thank them enough.

...

They helped me get through everything. I love those guys. Ever since I went back to work I have said 'I owe you all that much.' I learnt to cook and from then on I have cooked lunches every day for the guys. Whatever I could do for them, if they need something, I would go in the car and do it for them. Still to this day I thank them for helping me survive what I went through.<sup>19</sup>

4.25 He told the committee of his emotional struggle to survive:

When I was extremely ill there were times when I thought I was dying. I felt that I was going to die. There were times when it was extremely painful and I hoped I would die. When I looked at my two sons and my wife I thought, 'I cannot die yet because I want to enjoy my life with them.'<sup>20</sup>

### **Paul Henderson**

4.26 Paul Henderson began his career as a firefighter in 1976, and has worked his way to becoming Senior Station Officer. He was diagnosed with testicular cancer in 2007. His treatment included surgery, radiation therapy and six courses of chemotherapy. He chose to speak to the committee with the full knowledge that he would not benefit from the proposed Bill:

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18 Mr Scott Morrison, *Proof Committee Hansard*, p. 22.

19 Mr Scott Morrison, *Proof Committee Hansard*, p. 23.

20 Mr Scott Morrison, *Proof Committee Hansard*, p. 23.

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I will not personally benefit from this Bill, and neither will my family. But I feel just as strongly about this as if it was going to cover me and my family.<sup>21</sup>

4.27 Mr Henderson's experience reminded the committee of the benefits, outlined earlier in this report, of health awareness and early detection:

I found the lump myself though self examination and mentioned it to my doctor at a health monitoring appointment that is standard practice for the fire brigade. I was being vigilant because I knew of other firefighter that had testicular cancer and knew the earlier it was diagnosed the better chance the person had. I was aware of the link between firefighting and testicular cancer. I understand that testicular cancer is more commonly a young man's disease, but I had known older firefighters to be diagnosed with it so I remained vigilant.<sup>22</sup>

4.28 He related his experience with illness and accident insurance:

I started off with 1,900 hours of sick leave. I exhausted all that sick leave and ended up on a policy that I had when I joined the fire brigade for sick and accident insurance. I ended up on that for a further two months. When I was cleared to be operationally fit to resume duties and got back to the work the insurance company kindly notified me that they no longer wished to cover me and my policy was cancelled. I appealed and in the wisdom of sunlight they agreed to keep the policy running but refused to cover cancer. I did not get any discounts in the policy.<sup>23</sup>

4.29 Mr Henderson reflected on whether it would be possible to reduce the risk posed to firefighters by controlling the materials used in manufacturing. He stated:

I think that what a lot of it comes down to is probably the expansion of globalism. We have ships with containers full of all sorts of goods going from one country to another. We have ships of convenience now, and no-one can systematically keep enough records to link all the dots to find a trend or a commonality in something that is being abused. I think we do have a system, but I think the system also has some holes in it that other people are using to drive their goods through. There is the fire load in this room—these tables and the formaldehyde in them, or what they use in the carpet. You have already had this discussion in Melbourne. From our point of view, we would like to see a system that is fail safe, accountable and credible.

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21 Mr Paul Henderson, *Submission 4*, p. 2.

22 Mr Paul Henderson, *Submission 4*, p. 2.

23 Mr Paul Henderson, *Proof Committee Hansard*, p. 28.

I think it comes down to the lowest common denominator. We want products, and we want them as cheaply as we can get them. To get them cheaply, we have to manufacture them cheaply, and shortcuts are taken.<sup>24</sup>

4.30 Paul Henderson's prognosis is, fortunately, good. Nonetheless, like other cancer sufferers, he lives with the spectre of cancer even when in remission:

When I did not have cancer I never walked around thinking, 'What's going to happen when I get cancer?' Now that I have had cancer and now that I am in remission, is that little monkey going to tap me on the back with 'Knock, knock.' 'Who's there?' 'It's cancer.' I live with that.<sup>25</sup>

### **Ross Lindley**

4.31 Ross Lindley joined Melbourne's Metropolitan Fire Brigade in 1984. He served as a firefighter for 26 years before being retired for medical reasons in 2010.

4.32 He was diagnosed with multiple myeloma in January 2009 after an MRI scan. He immediately underwent an aggressive chemotherapy regime and had a stem cell transplant. The treatment itself was so intensive that it necessitated 18 months of recovery.

4.33 Ross Lindley told the committee how daunting a task he faced when he considered seeking workers' compensation:

I actually applied. I was one of the firefighters that Craig Sidebottom spoke about. The wife and I went in. It is very frightening when they tell you this is what you have to prove, this is what you have got to do: you will take it to court; you will have to fight the insurer; if you lose you are going to have court costs; chances are you are going to lose it because you have to find this information, which is near impossible. So we let it slide. We thought it was just too hard—let's get better.<sup>26</sup>

4.34 Having given up on pursuing compensation, he later sought to obtain records of chemicals he might have been exposed to during the course of his duties. He found that no records existed:

I rang the BA department to try to chase up these records and was informed that the records do not exist—after 24 hours they get thrown out...They were all gone. So there were no records of exposures of any kind. I then sent a letter to the metropolitan fire brigade requesting all the calls I had been to for my entire 26 years in the job and any exposures that I had been to and so forth and so forth—all the incidents and whatever. They sent a letter back saying, 'All we can give you is the reporting system. There are no records on exposures at all.' That was the brick wall I hit. You just

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24 Mr Paul Henderson, *Proof Committee Hansard*, p. 28.

25 Mr Paul Henderson, *Proof Committee Hansard*, p. 26.

26 Mr Ross Lindley, *Proof Committee Hansard*, 2 September 2011, p. 27.

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cannot prove which fire you went to that supposedly started this off. You have nothing to go with. With that we gave it up—we thought it was just going to be too hard. We can't prove a thing.<sup>27</sup>

4.35 His words echoed previous evidence the committee had received concerning the difficulty firefighters faced when seeking to access records of exposure, records which, even when available, are unreliable and often inaccurate.

4.36 Mr Lindley used up his sick leave, and, like many others, turned to income protection:

That reduces your income down to 70 per cent, which you have to pay tax on as well. Then I returned to work on light duties because it was just too much of a financial struggle being on income protection and still having a mortgage and family commitments, medical expenses and so forth. On light duties I could only work two-day shifts, so I was taking the night shifts off as annual leave which I had accumulated while I was crook. Once all that went I then had to go out on a pension. I was not allowed to return to work as a firefighter and I took a pension and left. Financially it has been very hard. I have redrawn on my housing loan, I am paying off a tax debt that I have incurred from the income protection and at this stage I am not working. I am just plodding along trying to make ends meet.<sup>28</sup>

## Conclusion

4.37 The community holds a deep respect and gratitude for those who serve to protect and assist. If we are honest, however, along with this respect and gratitude comes a generous dose of expectation. We expect firefighters to come to our assistance when our homes, schools, hospitals and businesses are ablaze. We expect that a firefighter will enter a burning building when every human instinct tells us to leave. We expect they will search for those trapped inside and bring them out alive. We expect them to do what they can to minimise loss of life and damage to property. While everyone else is fleeing danger, it is the firefighter's duty to tackle it head-on, to enter an extreme and dangerous environment, armed with the best protective gear available.

4.38 It is a duty firefighters take seriously, aware of the inherent risks to their own health and safety. This awareness on their part does not mitigate the community's responsibility towards them.

4.39 The committee has carefully examined the large amount of evidence with which it has been presented. Study after study has pointed to a higher risk of cancer for firefighters than the general population. Science has confirmed what firefighters suspected for decades: that a disproportionate number of them in the prime of their lives are brought down with illnesses usually reserved for the old and the infirm.

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27 Mr Ross Lindley, *Proof Committee Hansard*, 2 September 2011, p. 27.

28 Mr Ross Lindley, *Proof Committee Hansard*, 2 September 2011, p. 26.

4.40 The committee recognises that cancer is an illness that touches many fit, healthy people in the non-firefighter population as well. In many cases it is unpredictable and incomprehensible, due to genetics or factors we do not yet understand. But when the science tells us that a particular group of people who are routinely exposed through their service to the community to known carcinogens are at higher risk of developing certain types of cancer, then the response becomes clear.

4.41 The committee recognises that when a person spends their professional career inhaling and absorbing known—and probably some as yet unknown—carcinogens in the course of public service, it is the moral duty of the community to enable them to seek compensation should they fall ill as a consequence. For this reason the committee believes this Bill needs to be passed after being improved upon through incorporation of the committee's amendments.

4.42 The committee has conducted its analysis in the hope that similar legislation will be introduced across state jurisdictions in future as part of the harmonisation of workers' compensation laws. If this Bill is passed, the committee encourages state jurisdictions to engage in a dialogue which will eventually see a positive, and fair, outcome for firefighters across Australia.

#### **Recommendation 4**

4.43 The committee recommends that this Bill be passed subject to the foregoing recommendations.

**Senator Gavin Marshall**

**Chair**

# **COALITION SENATORS' ADDITIONAL COMMENTS**

Coalition senators welcome the opportunity to inquire into this important issue, and broadly support the arguments underpinning the committee majority's report. Coalition senators wholeheartedly share the committee majority's objective of securing a workable compensatory system for firefighters who fall ill with cancer related to their service. However, coalition senators remain to be convinced that presumptive legislation is necessarily the best mechanism to achieve this.

## **Recommendation**

**Coalition senators recommend that further consideration be given to ascertain how best to streamline firefighters' access to compensation for occupational cancer without necessarily resorting to presumptive legislation.**

**Senator Chris Back**

**Senator Bridget McKenzie**

**Deputy Chair**





# **APPENDIX 1**

## **Submissions received by the Committee**

- 1 United Fire Fighters of Winnipeg
- 2 Mr Mick Busst
- 3 Mr Phillip Wigg
- 4 Mr Paul Henderson
- 5 Mr Frank Besanko
- 6 Mr Guy McCrorie
- 7 Mr Scott Morrison
- 8 Mr Ross Lindley
- 9 Mr Philip Brown
- 10 Ms Karen Lindley
- 11 Fire Brigade Employees Union and United Voice, Northern Territory Branch
- 12 WorkSafe Victoria
- 13 Mr Michael Smith AFSM
- 14 Slater and Gordon
- 15 Australian Council of Trade Unions
- 16 Mr Brian Whittaker
- 17 Mr Phil Taylor
- 18 United Firefighters Union of Australia, ACT Branch
- 19 United Firefighters Union of Australia
- 20 Mr Janet Reed
- 21 Ms Sarah Reed
- 22 Mr Corey Reed
- 23 Mr Dean Symmans
- 24 ACT Department of Chief Minister and Cabinet

25	Department of Education, Employment and Workplace Relations
26	Mr Ken Block
27	Volunteer Fire Brigades Victoria

## **Additional Information received by the Committee**

- 1 DVD and transcript tabled by the United Firefighters Union of Australia, on 9 August 2011
- 2 Document tabled by Mr Ken Block, on 2 September 2011
- 3 Film Clip tabled by Mr Ken Block, on 2 September 2011.
- 4 Film Clip tabled by Mr Ken Block, on 2 September 2011.

## **APPENDIX 2**

### **Witnesses who appeared before the Committee**

**St James Court Conference Centre, Melbourne, Victoria  
9 August 2011**

FARRELL, Mr Mick, National President and Aviation Branch Secretary,  
United Firefighters Union of Australia

FORREST, Mr Alex, Private capacity

MARSHALL, Mr Peter, National Secretary, United Firefighters Union of  
Australia

TAYLOR, Commander Philip Taylor, Private capacity

WATSON, Ms Joanne, National Industrial Officer, United Firefighters Union of  
Australia

WHITTAKER, Commander Brian, Private capacity

**Parliament House, Canberra, Australian Capital Territory  
23 August 2011**

BAXTER, Ms Michelle, General Manager, Workplace Relations  
Implementation and Safety Group, Department of Education, Employment and  
Workplace Relations

BRIGHTON, Ms Meg, Director, Continuous Improvement and Workers'  
Compensation Branch, Chief Minister and Cabinet Directorate, Australian  
Capital Territory

KEFFORD, Mr Andrew, Deputy Director-General, Chief Minister and Cabinet  
Directorate, Australian Capital Territory

KIBBLE, Mr Steve, Comcare

LIS, Mr Henry, Branch Manager, Workplace Relations Legal Group,  
Department of Education, Employment and Workplace Relations

SULLIVAN, Ms Sarah, Acting Branch manager, Safety and Compensation Policy, Department of Education, Employment and Workplace Relations

**Cliftons Conference Centre, Perth, Western Australia  
2 September 2011**

BLOCK, Mr Ken, Private capacity

FORREST, Mr Alex, Private capacity

HENDERSON, Mr Paul Xavier, Private capacity

LINDLEY, Mr Ross Edward, Private capacity

MARSHALL, Mr Peter, National Secretary, United Firefighters Union of Australia

MORRISON, Mr Scott, Private capacity

REED, Mrs Janet Lucille, Private capacity

SIDEBOTTOM, Mr Craig Andrew, Practice Group Leader, Workers Compensation Department, Slater and Gordon Lawyers

SYMMANS, Mr Dean, Private capacity

WATSON, Ms Joanne, National Industrial Officer, United Firefighters Union of Australia