

## **Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024**

**Submission No:** 5  
**Submitted by:** United Fire Fighters' Union Queensland  
**Publication:**  
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**Submitter Comments:**

## Introduction.

The United Firefighters' Union of Australia, Union of Employees, Queensland (the UFUQ) is pleased to have the opportunity to provide this submission to the Education, Employment, Training and Skills Committee's (the Committee) detailed consideration of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024* (the Bill). The Bill proposes to amend (*inter alia*) the *Workers' Compensation and Rehabilitation Act 2003* (Qld) (the Act).

The UFUQ is a registered industrial organisation under the *Industrial Relations Act 2016* (Qld) and provides union coverage to approximately 2850 members including full-time firefighters, station officers and operational senior officers, scientific officers, auxiliary firefighters, and fire communication officers employed by the Queensland Fire and Emergency Service (QFES).

Should we be able to assist the Committee any further, the UFUQ welcomes requests for further information with regard to these submissions or any other matters. We advise we support publication of our submission should the Committee choose to do so, and that we also welcome the opportunity to provide verbal submissions to any stakeholder meeting the Committee holds.

## Submission.

### Clauses 1 – 2:

The UFUQ support these Clauses without further submission.

### Clauses 3 – 14:

The UFUQ supports the submissions of the QCU regarding amendments to the *Industrial Relations Act 2016*.

### Clauses 15 – 26:

The UFUQ support these clauses without further submission.

### Clause 27:

#### *1. Qualifying periods and 'day work'*

Firefighters of various classifications (ranks) are crewed to a fire and rescue appliance (a fire truck of various specialist types) for operational response to incidents. This crewing process exists for every fire and rescue station in the state. However, there are also a range of roles and duties that, due to their

specialised technical skill and qualification requirements, are performed by firefighters who are removed from the crewing process for appliances and are placed into roles called 'day work'.

In almost all cases, firefighters placed on day work have enough qualifications, expertise and years of practical operational firefighting experience to ensure their day work role remains focussed on operations and operational outcomes, no matter what work they are doing. Almost all day work roles are filled only by firefighters who have attained the rank of station officer, meaning they've spent many years responding operationally to fires and fighting them.

'Day work' roles are still operational roles inherent to the department's requirements to discharge the objects of the *Queensland Fire and Emergency Service Act 1990*. However, while a firefighter on 'day work' is removed from crewing fire appliances and therefore responding to fires and fighting them is not their principal role, they are still required to attend a wide range of emergency incidents. Whilst they are not directly involved in 'putting the wet stuff on the hot stuff' they are still operational firefighters responding to particular types of incidents as required, along with performing a wide range of administrative functions required by QFES. 'Day work' roles are (for example):

- a) Safety assessment officers,
- b) BA equipment officers,
- c) Building approval officers,
- d) State fire investigators,
- e) Live fire campus trainers.

Operational senior officers (the classifications of Inspector, Superintendent and Chief Superintendent) are almost all fulfilling 'day work' based roles, yet they are also (for example) rostered on-call across the year to respond to incidents in a command and control capacity.

The UFUQ (through its affiliation with the Queensland Council of Unions (the QCU)) contributed to the QCU written submission<sup>1</sup> to the independent '2023 review of the operation of the Queensland workers' compensation scheme'<sup>2</sup> (the review). The UFUQ input to the QCU submission specifically related to the matter of qualifying periods required for the presumption of injury within the Act. The QCU submission '7.3 – Service required to claim benefit of presumption' highlighted the QCU's and the UFUQ's shared concerns.

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<sup>1</sup> Queensland Council of Unions 'Submission to the 5 Year Statutory Review of the Workers' Compensation & Rehabilitation Act 2003 (Qld)' [p 29] [Unpublished submission]

<sup>2</sup> [https://www.worksafe.qld.gov.au/data/assets/pdf\\_file/0012/120063/2023-review-operation-Qld-workers-compensation-scheme.pdf](https://www.worksafe.qld.gov.au/data/assets/pdf_file/0012/120063/2023-review-operation-Qld-workers-compensation-scheme.pdf)

The QCU submission provided examples of how workers could be excluded from presumption of injury if performing 'day work', where 'day work' could result in the worker failing to meet the existing threshold of being 'employed for the purpose of firefighting' that currently includes a requirement for the worker to have 'attended fires'.

It is this grey area of working as a firefighter but not being rostered to the principal role of attending (and fighting) fires that the QCU submission intended to propose clearing up. This was submission intended to remove the requirement for UFUQ members having to work through the burden of proof of their injury being work-related, where colleagues who have not spent time on 'day work' automatically meet the presumption of injury threshold. The Bill proposes inclusion of the term 'relevant duties' to capture (amongst other things) 'day work' as being work that is directly related to firefighting, often involving attendance on the fire ground, but not actually fighting fires.

Whilst the amendments within the Bill refer to relevant duties and do not specifically use the term 'day work', we note that amongst the introductory statements made by The Honourable Ms Grace Grace, the Minister for State Development and Infrastructure, Minister for Industrial Relations, and Minister for Racing (the Minister) on presenting the Bill to the Queensland parliament on 17 April 2024, the Minister stated (*inter alia*):

*'The bill also makes improvements to qualifying periods, including reducing the qualifying period for primary site oesophageal cancer to 15 years and clarifying that the calculation for the minimum qualifying period includes periods of day work rotation. This is technical but necessary.'*<sup>3</sup>

(our emphasis added)

We further note the reference to 'day work' in the Explanatory Notes to the Bill, tabled in Queensland parliament by the Minister on 17 April 2024:

*'For a disease to be eligible for the presumption an eligible firefighter must meet a qualifying period or number of years that they were employed for the purpose of firefighting and have attended fires to the extend reasonably necessary to fulfil the purpose of their employment (section 36D). To address concerns that firefighters on day work rotation may be excluded from the presumption, the Bill clarifies by way of 'relevant duties' that they are to be included in calculating the qualifying period (Clause 27). This improves access to the presumption.'*<sup>4</sup>

(our emphasis added)

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<sup>3</sup> [https://documents.parliament.qld.gov.au/events/han/2024/2024\\_04\\_17\\_DAILY.pdf](https://documents.parliament.qld.gov.au/events/han/2024/2024_04_17_DAILY.pdf) [p 1055]

<sup>4</sup> <https://documents.parliament.qld.gov.au/tp/2024/5724T595-4AE8.pdf> [p 6]

The UFUQ consider the wording of the proposed amendment, in conjunction with the intent of the amendment as articulated in the Minister's introduction of the Bill and in the Explanatory Notes to sufficiently address the matter of 'day work' being included in assessment of qualifying periods. We are supportive of the amendment proposed by the Bill.

## *2. Qualifying periods and 'long term leave'*

The Bill proposes to amend the Act to address limitations arising from 'day work', though it has not addressed the matter of the limitation to accessing presumption of injury arising from a worker taking approved leave for periods that exceed 12 months ('long term leave'). UFUQ members have the opportunity (as do all permanently appointed Queensland government public sector workers) to apply for various forms of approved leave that individually, or together, where the entitlement will extend for periods longer than 12 continuous months.

The UFUQ note that the risk of excluding periods of 'long term leave' is particularly significant for women firefighters, who remain (for various reasons) more likely to be the primary caregiver after the birth (or adoption) of a child. Extended periods of 'long term leave' via approved forms of parental leave (potentially adjoined to other forms of approved leave) frequently may result in a firefighter (likely to be a woman) quite reasonably taking 'long term leave' and thus not meeting the threshold of performing the 'relevant duties' during the qualifying period proposed by the Bill in Clause 27.

We also note that there are, of course, multiple other scenarios where a firefighter of any gender may be able to access periods of approved leave exceeding 12 months, and these may equally negatively impact qualifying period assessments.

Whilst the Bill addresses 'day work' as discussed above, the matter of long term leave (and acknowledgement of its particular impact on women firefighters as evidenced by the inclusion of the Special Commissioner, Equity and Diversity in the government response to the matter or determining a way forward) has remained untouched by the proposed amendments.

Not covering periods of 'long term leave' may result in a worker who has had a period of leave having to satisfy the burden of proof for the injury being work related, when their colleagues are eligible for the presumption of injury. We note the Queensland Government response<sup>5</sup> (the government response) to recommendation 27 of the review:

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<sup>5</sup> [https://www.worksafe.qld.gov.au/data/assets/pdf\\_file/0027/125676/government-response-2023-review-workers-comp-scheme.pdf](https://www.worksafe.qld.gov.au/data/assets/pdf_file/0027/125676/government-response-2023-review-workers-comp-scheme.pdf)

*'That the Minister:*

*...*

*(b) refer the...issue of the treatment of extended leave, for consultation with stakeholders, experts and the Special Commissioner, Equity and Diversity...'*

Following the publication of the government response, the UFUQ was involved in multiple meetings of a stakeholder reference group convened and coordinated by the Office of Industrial Relations Workers' Compensation Regulatory Services. Discussions were held on multiple occasions within that group about both 'day work' and 'long term leave' and their potential impacts on access to presumption of injury.

Parties to the stakeholder reference group were all aware of an application to the insurer by a UFUQ member including presumption of injury where the qualifying period was tested prior to the claim being accepted due to a period of 'long term leave'. Further details of this application (that was ultimately accepted by the Insurer) are considered confidential by the UFUQ and are therefore not expanded upon here, but for saying the particular circumstances of that application were illustrative to the parties in their discussions about what might be required to address 'long term leave' in the legislation.

In summary, the UFUQ recommend the Committee include in their report a Recommendation that a further amendment to the matter of qualifying periods for presumption of injury includes wording in the Act specifically permitting absence from relevant duties for periods of approved leave, where the overall quantum of years required by each deemed disease's qualifying period is met.

**UFUQ RECOMMENDATION:**

**Further amend the Act to include approved periods of 'long term leave' (where this leave can be defined for the amended section of the Act to mean periods greater than 12 continuous months) to be included within calculations of qualifying periods for presumption of injury.**

**Clauses 28 – 40:**

The UFUQ support these Clauses without further submission.

**Clause 41:**

The UFUQ supports the submission of the QCU to the Committee on the importance of the amendments proposed in Clause 41, in particular the QCU position that union representatives must

also be consulted when a worker has requested their assistance (via the proposed enhancements to the amendment QCU has proposed).

Early rehabilitation and return to work intervention is notoriously beneficial to workers who have sustained an injury. The 10 business day requirement for development of a return to work plan (with allowances for the plan to develop as more information becomes available) is a positive improvement to the way UFUQ members are managed when injured.

QFES has a poor history of staying 'on top of' injury management, and this requirement will allow the UFUQ to monitor and report QFES where necessary for failing to expedite rehabilitation.

Enhancing the requirement for the worker to be directly involved in the development and/or to nominate others who are also to be involved in injury management is also supported by the UFUQ. And finally, the capacity for the worker to change rehabilitation providers is also supported.

#### Clause 42:

The UFUQ supports the submission of the QCU to the Committee on the importance of the amendments proposed in Clause 42, in particular the QCU position that the Bill does not address what is to occur when the Insurer determines the employer can provide suitable duties, including capacity for the employer to be required to pay a penalty, and notification to the Regulator.

The UFUQ considers QFES efforts regarding provision of suitable rehabilitation to injured employees could be significantly improved. Clause 42 amendments requiring the employer to provide rehabilitation of a suitable standard, and for the employer to provide evidence where suitable duties are impracticable are both strongly supported by the UFUQ on the basis this may improve the way QFES manages rehabilitation for our members.

Submissions<sup>6</sup> by the UFUQ to the review included reference to the poorly managed provision of suitable duties to our members. We referred to QFES over-reliance on 'host employer' solutions, and the department constantly suggesting there were no suitable duties at all for workers with often quite reasonable prospects of returning to the same role they had pre-injury. The UFUQ submission referred to the 'host employer' suitable duties being so far removed from both the workplaces our members are crewed to and from the sort of work they usually perform.

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<sup>6</sup> 2023 Independent review of the operation of the Queensland Workers' Compensation Scheme - Submission by the United Firefighters' Union of Australia, Union of Employees, Queensland [p 11-13] [Unpublished submission]

Regular placement at op-shops or hardware stores is considered belittling and removal of our members from their regular workplaces contributes to then devaluing their sense of worth to QFES. Thus the UFUQ submission to the review stated:

*'It is simply not enough for the employer responsible for the injury to say there's no work for the injured worker to do.'*

The UFUQ also strongly supports the ability for the Insurer to make a decision on whether or not rehabilitation is in fact impracticable, and for penalty provisions being enlivened when an employer has failed to take reasonable steps.

The UFUQ expects to rely on these new provisions on a regular basis to drive QFES and the Insurer to improve what has historically been (what the UFUQ considers to be) a failure to engage injured workers proactively and reasonably in appropriate suitable duties, or in any suitable duties at all.

Then UFUQ considers the amendments resulting from Clause 42 will improve the return to work prospects for our members with regard to the likelihood of returning to the same role with QFES, particularly if the further enhancements proposed by the QCU are recommended by the Committee.

#### Clauses 43 – 45:

The UFUQ support these Clauses without further submission.

#### Clause 46:

The UFUQ supports the submission of the QCU to the Committee on the importance of the amendments proposed in Clause 46 and provides this additional summary supporting submission.

The Bill (at Clause 46) proposes to insert the following:

232AC(2) *'...including by providing reasonable services to the worker.'*

The UFUQ considers the opportunity to clarify what sort of reasonable services are intended would better serve the intent of the amendment. Specifically, clear links need to be established between the expectation that the employer provides 'reasonable services' to expedient injury management and return to work plans, both developed in consultation with all parties (including the worker and their union), reasonable and demonstrable attempts to provide meaningful suitable duties at the worker's place of work, and more engagement between the injured worker and employer representatives.

These matters are lacking in QFES management of injuries. Were they required to be improved by the Act, then it would reduce the risk of UFUQ members further decompensating psychologically.



In 2019 the UFUQ made a formal submission to the Senate Committee Inquiry into first responder mental health<sup>7</sup>. We submitted (*inter alia*) that our members with a physical injury who are not receiving rehabilitation via meaningful work directly related to their usual employment creates a risk of psychological decompensation.

Further, on this matter our second submission<sup>8</sup> to the review the UFUQ stated:

*'We believe that, to answer Workcover Queensland's question, underlying drivers of growth in secondary mental injuries is attributable to a poor return to work experience.'*

To summarise, as with our submission to Clause 42 above, Clause 46 (with the enhancements proposed by the QCU and above) is supported by the UFUQ on the basis it may drive better return to work processes that include valid suitable duties.

#### Clauses 47 – 48:

The UFUQ support these Clauses without further submission.

#### Clauses 49 and 50:

The UFUQ supports the submission of the QCU to the Committee on the importance of the amendments proposed in Clauses 49 and 50 and we provide this additional submission.

QFES promotes itself as a model employer and model litigant. As such, whilst it might be expected that a model employer would do all it could to offer best practice standards within any service they provide to workers without the need to increase the level of enforceable options, in the area of workers' compensation, and particularly injury management and rehabilitation and return to work, the UFUQ considers QFES is far from best practice.

This leaves the UFUQ with the view that any progression from guidance materials to enforceable Direction within the workers' compensation scheme is supported, as it may provide better outcomes given how risk averse QFES is in consideration of its legal obligations.

We also consider it important that the Act recognises that where scheme directions and/or codes of practice exist, that they are required to be regularly updated to ensure currency with best practice medical knowledge and injury management and return to work practices. Further expanding on Directions introducing new content to them is also supported by the UFUQ.

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<sup>7</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/Mentalhealth/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Mentalhealth/Report)

<sup>8</sup> UFUQ response to Workcover Queensland's Submission to the 2023 Independent Review of the Operation of the Queensland Workers' Compensation Scheme [p 5 – 7] [Unpublished submission]

As with our submission to Clause 46, we rely on our statements in our second submission<sup>9</sup> to the review. Specifically, we stated:

*'We submit that in support of our recommendations 3 and 4, the Act ought to be amended to mandate that employers are required to comply with guidelines (which ought to be made into, at minimum, a Code of Practice, and that Workcover Queensland ought to be made to enforce compliance by employers with the guidelines (and must comply with the guidelines themselves).'*'.

#### Clauses 51 – 59:

The UFUQ support these Clauses without further submission.

#### Clause 60:

Amongst the services the UFUQ provides to its members, we have for some decades focussed on assisting our members dealing with the notable rate of cancers and other illnesses they contract either during or after their employment with QFES. The UFUQ has adopted a two pronged focus in supporting our member's health, striving for their access to –

- a) prevention (for example via advocating for world's best practice protective equipment and clothing and post-incident decontamination processes for our members) and
- b) treatment/compensation for our members who contract an illness arising from their work (for example via advocating for enhancements to the Act).

Since the UFUQ's efforts in conjunction with the (then Palaszczuk) state government that resulted in UFUQ members obtaining the first set of presumptive laws for deemed diseases in 2015, much has occurred to demonstrate more work was required to fairly manage compensation for our members via the Act.

For example, in July 2023 in Monograph 132 (*Occupational Exposure as a Firefighter*) the International Agency for Research on Cancer (IARC) stated that '*occupational exposure as a firefighter is complex*'<sup>10</sup>.

And, in one of the most significant developments regarding firefighter health this century, in recognition of the growing body of data worldwide, in July 2022 IARC took the step of escalating

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<sup>9</sup> UFUQ response to Workcover Queensland's Submission to the 2023 Independent Review of the Operation of the Queensland Workers' Compensation Scheme [p 6 – 7] [Unpublished submission]

<sup>10</sup> IARC (2023). Occupational exposure as a firefighter. *IARC Monogr Identif Carcinog Hazards Hum.* 132: [p 1–730]

occupational exposure in the firefighting profession from Group 2B (possibly carcinogenic to humans) to Group 1 (carcinogenic to humans)<sup>11</sup>.

IARC's consideration that firefighting creates a complex set of exposures is supported by the US National Institute for Occupational Safety and Health (NIOSH) statement that firefighters are *'exposed to hundreds of different chemicals in the form of gases, vapours, and particulates. Some of these chemical substances are known or suspected to cause cancer. Some of these hazardous substances are byproducts of combustion or burning, such as benzene and formaldehyde.'*<sup>12</sup>.

The UFUQ has for many years, taken on board the positions of organisations such as IARC and NIOSH, and also relied on their research into cancer and other illness rates in firefighters, as the basis for our advocacy on treatment, rehabilitation, and compensation opportunities for our members. UFUQ submissions to the review<sup>13</sup> included data from organisations such as IARC to substantiate our position that the number of deemed diseases included within the Act be increased.

In their report of the review, the reviewers acknowledged that *'certain stakeholders recommended the presumptive provisions for firefighters should be expanded'* and that expansion would *'reflect the current studies and the recent findings of the World Health Organisation...'*. The reviewers recommended *'that the Minister consider introducing a Bill to add asbestos related diseases, primary site liver cancer; primary site lung cancer; primary site skin cancer; primary site cervical cancer; primary site ovarian cancer; primary site pancreatic cancer; primary site penile cancer; primary site thyroid cancer and malignant mesothelioma into the Act as presumptive illnesses for firefighters.'*

In their response<sup>14</sup> to the report, the Queensland state government accepted Recommendation 26, and subsequent stakeholder engagement resulted in the UFUQ providing input to the stakeholder reference group, and, ultimately, to inclusion of Clause 60 in the Bill.

Australian jurisdictions currently have a varied range of deemed diseases compensated for within their worker's compensation legislation, with inconsistency in both the types of illnesses and also qualifying periods. On the matter of the need for consistency, the UFUQ submitted to the review there was a need for consistency across Australia in the types of diseases deemed to be caused by firefighting.

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<sup>11</sup> Demers P.A. et al, 'Carcinogenicity of occupational exposure as a firefighter', *The Lancet Oncology*, 2022, 23(8) [p 985-986]

<sup>12</sup> <https://www.cdc.gov/niosh/newsroom/feature/firefighter-cancer-awareness.html>

<sup>13</sup> [https://www.worksafe.qld.gov.au/data/assets/pdf\\_file/0012/120063/2023-review-operation-Old-workers-compensation-scheme.pdf](https://www.worksafe.qld.gov.au/data/assets/pdf_file/0012/120063/2023-review-operation-Old-workers-compensation-scheme.pdf)

<sup>14</sup> [https://www.worksafe.qld.gov.au/data/assets/pdf\\_file/0027/125676/government-response-2023-review-workers-compensation-scheme.pdf](https://www.worksafe.qld.gov.au/data/assets/pdf_file/0027/125676/government-response-2023-review-workers-compensation-scheme.pdf)

The UFUQ commends the Miles' ALP government and Minister Grace for proposing the expansion of the list of deemed diseases via Clause 60.

This amendment will establish Queensland as providing the most comprehensive Australian access to presumption of injury to firefighters who meet the relevant criteria. The consistency the UFUQ sought in our advocacy is met, if not exceeded, by the proposed amendment. We consider Queensland is leading the way on these laws in Australia and there is now an opportunity for other jurisdictions and the firefighter unions within them to work together on enhancing their legislation to equal the world's best practice list of deemed diseases provided for in the proposed amendment.

The UFUQ wholeheartedly support progression of Clause 60 of the Bill amending the Act.

Clauses 61 – 65:

The UFUQ support these Clauses without further submission.

End of submission.