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Firefighter Cancer Foundation Australia

ABN 21 839 546 036

7 August 2015

Research Director
Finance & Administration Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sir/Madam

**RE: WORKERS' COMPENSATION AND REHABILITATION AND OTHER
LEGISLATION AMENDMENT BILL, 2015**

**WORKERS' COMPENSATION AND REHABILITATION (PROTECTING
FIREFIGHTERS) AMENDMENT BILL, 2015**

INTRODUCTION

1. The Firefighter Cancer Foundation Australia (FCFA) provides support and resources to all firefighters (and their families) that are stricken by cancer.
2. We are actively involved in education awareness aimed at minimising carcinogenic exposure for those engaged in the occupation of firefighting.
3. The FCFA is actively involved in providing advocacy and resources for firefighters with cancer claiming workers compensation.
4. We are the National Australian office for the International Firefighter Cancer Foundation, which was founded in 2004.
5. The FCFA have been involved in discussions with the Government and the Opposition in relation to their respective Bills as they relate to the introduction of presumptive legislation for firefighters diagnosed with cancer in Queensland.
6. The FCFA welcomes the opportunity to participate in this Inquiry.



THE FIREFIGHTER CANCER EXPERIENCE

7. The Firefighters we assist and support are permanent, auxiliary and volunteer firefighters.
8. Just like cancer, we treat and view their employment status is irrelevant. They are all involved and engaged in what we term as “the occupation of firefighting”
9. As we know, firefighters are trained to manage and fight fires that the general public would not think possible, often placing themselves in positions of extreme danger. They are seen as heroes.
10. There is an expectation from the communities they protect that firefighters will attempt a rescue no matter how dangerous the situation may be. Firefighters are aware of this expectation and train rigorously to effect rescues over many different, trying and deadly scenarios so they are ready when they are confronted with the real life event. Their concern in these situations is not for their own well-being but for the safety and wellbeing of those they are charged to protect.
11. Not surprisingly, our experience has confirmed that when a firefighter is diagnosed with cancer their immediate concern is not for themselves but rather for their family and loved ones.
12. Firefighters are used to being in battles and once they are diagnosed they steel themselves for the journey ahead. However the lengths that they will go to ensure that their families are not impacted in anyway is nothing but amazing.
13. Their immediate reaction is to ensure their family is not subjected to any loss of income.
14. A paid firefighter will use up all their sick leave, annual leave, long service leave or superannuation income protection, while going through treatment.



15. The volunteer firefighter journey with cancer is different from the paid firefighter because their income may be a family business or enterprise that is totally dependent on the ability to continue working. Sick leave, annual leave, long service leave even income protection under superannuation may not be available.
16. The family's financial security becomes the main focus and the threat to a firefighter's life from cancer becomes less important.
17. Presumptive legislation enables quicker access to workers compensation which then eases the burden and provides some financial security and support so that the fight for their life remains top priority.

Current Claims under Workers' Compensation and Rehabilitation Act

18. The FCFA are currently assisting a number of firefighters presently traversing their way through the workers' compensation system.
19. Some of the firefighters we are assisting have had their claims for cancer accepted.
20. Sadly, one firefighter recently died from his occupational cancer and just two weeks later his claim for workers compensation was accepted.
21. A number of claims have been accepted without the benefit of presumptive legislation but it has taken 6 – 12 months or more each time to go through the process of proving the claim.
22. We have a number of firefighters whose applications for compensation are yet to be decided.



23. Others are proceeding with a review to the Worker's Compensation Regulator because their claims have been rejected. These firefighters have cancers that are not in the specified diseases list in the proposed legislation but their cancers are supported in the scientific literature as having occupational cause and are supported by medical experts who specialise in this field of occupational cancers who say that the occupation of firefighting is a significant contributing factor for the cancer.
24. Many firefighters fighting occupational cancer don't claim Workers' Compensation.
25. We have been advised by numerous firefighters that they have been led to believe that until there is presumptive legislation they cannot claim or their claim will not be accepted. This is simply untrue and misleading.
26. Instead they have accessed sick leave and other leave entitlements including income protection insurance or access superannuation. They have also funded their own medical treatment. This is unnecessary when workers' compensation entitlements are already available to them.
27. Workers' compensation claims by firefighters for occupational cancer have been and are being accepted by WorkCover Queensland.
28. Presumptive legislation doesn't suddenly create an entitlement to claim workers' compensation; that entitlement has always existed.
29. Presumptive legislation just makes the claims process easier and quicker (provided the thresholds are met) to successfully claim, at a time when firefighters are fighting for their lives.



THE SCIENCE BEHIND THE PRESUMPTION

30. The effects on firefighters who have been exposed to carcinogens at fire scenes has been the subject of scientific research conducted worldwide. The research has found a clear link between firefighting as an occupation and the increased risk of developing some cancers. These include: brain, prostate, testicular, breast, kidney, bladder, leukaemia, non-Hodgkin's lymphoma, multiple myeloma, ureter, colorectal and oesophageal cancers.
31. If a firefighter with a certain number of years' service develops these types of cancer, then that cancer is considered to have been caused by occupational firefighting exposure to carcinogens at fire scenes and in the clean up afterwards.
32. This research highlights the very real danger to the health of firefighters worldwide, including Queensland.
33. The science tells us that occupational cancer results from cumulative exposure, and not necessarily cumulative by number of exposure events attended but over a number of years.
34. This means that firefighters who develop cancer, and are seeking workers' compensation, will need to provide evidence of their exposure going back over a specified number of years.
35. We have re-read thousands of pages of research from around the world on this topic and consulted the experts and have been unable to find the science that supports a threshold of 150 or more exposure events before a specified cancer in a volunteer firefighter will or can develop.
36. We would respectfully ask the Committee to identify the research that supports the proposition and policy of a threshold of 150 or more exposure events in volunteers, in order that it can be better understood.



37. Our view is that carcinogenic exposure levels, carcinogenic exposure duration and the cancers that develop do not discriminate and nor should the benefit of presumptive legislation discriminate between category of firefighter based on employment status.
38. If the threshold for volunteers is passed, this does not mean that volunteers have no access to workers compensation; they can still apply and have claims accepted because the medical and scientific research still supports their claims. It just makes an already hard time, harder and probably encourages them not to apply.

The Need to review the Specified Disease List

39. The occupation of firefighting and cancer is probably one of the most researched in the world. We acknowledge that the scientific literature supports a presumption for certain types of cancer. We also note that continuing research into this area is identifying the need for presumption in other cancers currently not included in the legislative list of cancers (specified diseases) proposed.
40. We anticipate that as more research is undertaken and better data collected over time that the proposed legislative list of cancers will increase in size or perhaps be amended to adopt a body system identification method whereby organs grouped together because of their proximity to each other and the use of common path ways, for example: genitourinary (prostate, bladder, kidney, ureter, testicular) are preferred for specified disease tables.
41. We would welcome the inclusion into the Bill of a review requirement of the Specified Diseases to facilitate the inclusion of other cancers over time, so that the legislation keeps up with the research.

THE BILLS

42. We note that there are two Bills before the Committee which relate to workers' compensation and firefighters with occupational cancer.



43. We note that the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill, 2015 addresses a number of amendments to that Act including the introduction of presumptive legislation for firefighters, whereas the Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill, 2015 only addresses issues pertaining to firefighters and presumptive legislation for occupational cancer.
44. Insofar as these submissions are relevant to each Bill, we will only be referring to those provisions within each Bill that relate to the occupation of firefighting, occupational cancer and presumptive legislation.

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill, 2015

Clause 16, Amendment of Section 15 (Volunteer Firefighter or Volunteer Fire Warden)

45. We welcome the amendment but note that the volunteer firefighter relying on the presumption provisions is unlikely to ever benefit from this amendment due to the evidentiary burden of meeting a threshold of 150 exposure events.
46. The Volunteer firefighter still needs to have an accepted statutory claim in order to proceed in a common law negligence claim.

Clause 18, Insertion of New Chapter 1, Part 4, Division 6, Sub-Division 3(b) – Injuries Sustained by Firefighters

Section 36B – Definitions for sdiv 3(b)

47. The definition of "firefighter", in our view, leaves a number of the State's firefighters without the benefit of the presumptive legislation being proposed.



48. We therefore suggest that a general catch-all provision also be included so that firefighters, for instance, employed in National Parks or engaged in private enterprise; e.g., coal mines, gas and other sections of private enterprise are given the benefit of the presumption if they meet its thresholds.
49. These firefighters are still engaged in the occupation of firefighting and are experiencing dermal, thermal, digestive and respiratory exposures to carcinogenic particulates at fire events. They should be afforded the same benefit of the presumption as any other person in Queensland engaged in the occupation of firefighting. Again cancer and occupational exposure does not discriminate based on employment status.
- 50. Section 36C, Meaning of Exposure Incident**
51. We note the criteria for an exposure incident in that:-
- (a) The firefighter attends a location; and
 - (b) A fire is burning at the location; and
 - (c) The firefighter participates in extinguishing, controlling or preventing the spread of the fire at the location.
52. We question the meaning of “burning”. We suggest a definition be included so that it includes smouldering or other heat-related events such as overhaul or dampening down work.
53. The scientific literature illustrates the dangerous nature of carcinogenic exposure on a dermal, thermal, respiratory and digestive basis during the overhaul phase of firefighting.
54. A volunteer attending to overhaul/ dampening down after the burning fire has been extinguished under the proposed legislation would not be able to say that the attendance to perform dampening down/overhaul was an exposure event, simply because a fire is not burning.



55. At the overhaul/ dampening down stage of a fire event there may not necessarily be a fire burning and firefighters are not necessarily extinguishing, controlling or preventing the spread of actual fire at a location. This element of firefighting involves going back over the location of the fire and turning over the burnt piles to extinguish any hot spots (but there may not be a fire burning).
56. The studies show that this can be more hazardous from an exposure perspective than the actual fire and full turnout gear and BA are not usually worn when undertaking this aspect of firefighting.
57. We note there is no provision for exposure incidents to include attendance at locations where there are chemical spills. Volunteer firefighters attend locations where there are chemical spills and other HAZMAT events where carcinogenic exposure occurs.
58. The definition of “exposure incident” does not capture all dangerous exposure events likely to be encountered by the firefighter.
59. In our view, the exposure incident should not be confined to a fire burning, but should be expanded to also include attendance at a location where there was a fire and the overhaul process is required to be undertaken and chemical spills.

Section 36D – Presumption of Injury

Section 36D 1(c) - If the person was a volunteer firefighter for any period of the person’s employment mentioned in paragraph (b) – has attended at least 150 exposure incidents.

60. This section establishes an exposure threshold for volunteers.



61. The imposition of a threshold for volunteers is arbitrary and unfair, particularly when it is well known throughout the industry that volunteer firefighters are not provided with the same quality or quantity of PPE and BA as full time firefighters and they are often the persons who attend bushland fires for long periods of time (multiple days) where BA is not worn at all.
62. The FCFA has a significant problem with the requirement of a volunteer firefighter having to prove his or her attendance at 150 exposure incidents, over the relevant number of years applicable to a particular cancer diagnosis.
63. The problem has a practical complexity we think has not been considered by the Government but may have been considered by the LNP as demonstrated by the absence of a threshold for volunteers in the Workers' Compensation and Rehabilitation (Protecting Firefighters) Amendment Bill, 2015.
64. The prerequisite to produce evidence of 150 exposure events is unachievable as historically record keeping has been varied across the regions and through the decades.
65. Currently there is no ability for volunteer firefighters to officially identify an attendance at a fire event.
66. The firefighters we have assisted to date have had to conduct Right to Information searches to access fire events attended and these searches have revealed an inconsistent and incomplete record-keeping system by the Department.
67. For example, six firefighters we are currently assisting have made Right to Information applications for access to their firefighting records. Not one of those firefighters was able to access a full and complete record of attendances at events (whether that be structural, bush, vehicle, chemical etc.) covering their full employment duration.



68. In our view, this legislation is imposing on the volunteers who are diagnosed with a listed cancer (specified disease) a threshold that can never be met.
69. We would welcome the removal of the threshold for volunteers in its entirety.
70. In the alternative, we would support an amendment which sets out a combination of benchmarks which is reflective of the unique risks facing volunteers and which is linked to data that is readily available.

Section 36E (3), Deciding Number of Years

71. The number of years may be made up by taking into account:-
- (a) More than one period of employment; or
 - (b) Periods of employment as more than one type of firefighter.
72. When applying for a full-time firefighter position with the QFES, a candidate is allocated more points if they have volunteer firefighting on their Resume. Many current full time firefighters were volunteers at some stage in their early firefighting career.
73. We note the examples given in the Bill and repeat and rely upon our above submissions in relation to the difficult if not impossible task, of any volunteer firefighter providing the evidence of 150 exposure incidents over any period of time.

Section 36F, Deciding Number of Exposure Incidents Attended

74. There is no definition of "an igniting event".



75. We support the inclusion of a definition.

Part 3, Amendments Commencing on Introduction

Section 712, Firefighter Diagnosed with Specified Disease Before Commencement.

76. We refer the Committee to the Northern Territory legislation and note that they included a sunset clause which essentially allowed a three month extension for claimants who had been diagnosed before the commencement date to apply.
77. We would support a similar clause.

THE REBUTTAL

78. We remind the Committee of the benefit to the Insurer and the QFES of the right of rebuttal.

79. This provision provides reasonable assistance and assurance to the Department and the Insurer if there is a perceived lack of supporting evidence associated with any WorkCover claim.

The Firefighter Cancer Foundation Australia continues to assist all firefighters in their journey with cancer.

We are ready to support, advocate, and educate our firefighters so they can continue to carry out this noble profession with a reduced risk of contracting occupational disease.

The FCFA have achieved numerous successful WorkCover claims for firefighters with occupational cancer.



For the government to consider making the ability for volunteer firefighters WorkCover claims incessantly harder to achieve than what presumptive legislation is intended to achieve, needs to be addressed.

The Firefighter Cancer Foundation stands proudly beside all our firefighters and we ensure they are never alone, forgotten or ignored.

I am yet to meet a person who became a firefighter so they could get cancer and make a WorkCover claim.

We are available to respond to or comment on any questions the Committee may have in relation to this Submission and any aspects of the occupation of firefighting and cancer.

Yours Faithfully



Steve Bunney

Director

Firefighter Cancer Foundation Australia



www.firefightercancer.org.au