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10 Aug 2015
Finance and
Administration Committee

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10 August 2015

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By email: fac@parliament.qld.gov.au

Dear Chair

Re: Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015

We write to provide submissions in relation to the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015 (**the Bill**), which is currently with the Finance and Administration Committee (**the Committee**) for its consideration.

Our firm commends the Palaszczuk Government's tabling of the Bill and observing their pre-election commitment to restoring the rights of injured workers in Queensland.

We commend the government's proposal to make amendments reversing the introduction of the common law threshold to the date of the state election, given that the introduction of the threshold was contrary to the previous Committee's recommendations in relation to the amendments to the *Workers' Compensation and Rehabilitation Act 2003* (**the WCRA**) proposed by the former Government in 2013.

We also look forward to the release of further details in relation to the proposed additional lump sum to be made available to workers injured between 15 October 2013 and 30 January 2015. It is apparent that the additional lump sum will only be made available to those injured workers who would have had at least a prima facie case for a common law claim. We observe that such a group would comprise of a limited number of members and the additional lump sum qualifying workers are to receive should adequately reflect the value of the common law right they have lost and in our respectful view be something more than a nominal sum.

We commend the proposed removal of section 571D from the WCRA. However, we consider that the whole of Division 1 of Chapter 14, Part 1 of the WCRA ought be repealed as these provisions were not the subject of the previous Committee's terms of reference in relation to the 2013 amendments, and leave open the unreasonable possibility of a worker unknowingly misleading an employer (an example being in circumstances where a pre-

existing condition had not been identified or diagnosed at the time employment commenced, the consequence of which could see such a worker being disentitled to statutory compensation as well as losing the right to pursue legitimate claims at common law). We are also aware that employers have been advised not to utilise these provisions.

We also commend the introduction of a rebuttable presumption in favour of firefighters diagnosed with certain cancers that have been shown to be causally related to firefighters' occupation.

There is a persuasive body of evidence confirming that firefighters have an increased incidence of cancer in relation to a number of specific cancers. That evidence has recently been confirmed by the Australian Firefighters' Health Study, published by Monash University's Centre for Occupational and Environmental Medicine in December 2014.The Bill defines the cancers linked to firefighting, listed at the proposed section 32A(1)(b), as 'specified diseases'.

While, in our experience, the body of evidence available places medical practitioners in a position to give evidence that it is possible (even a very real possibility) that a specific occurrence of a specified disease resulted from a firefighter's employment, it remains difficult for medical practitioners to confidently give opinion evidence that, on the balance of probabilities, a specific occurrence of a specified disease was significantly contributed to by a firefighter's employment.

In such cases, as the WCRA currently operates, a workers' compensation insurer would be left with no choice but to reject the firefighter's application for compensation on the basis that they had failed to prove that the onset of the specified disease was significantly contributed to by their employment.

In our view, given the persuasive body of evidence indicating an increased incidence of specified diseases among firefighters, it is unreasonably harsh to deny firefighters diagnosed with a specified disease workers' compensation entitlements when that denial is predicated upon an epistemological lacuna between the persuasive body of evidence and a doctor's inability to provide a conclusive opinion in relation to the link between occupational exposure to cancer causing agents and the occurrence of a specified disease.

The appropriate remedy to this harsh operation of the WCRA is to introduce a presumption, founded on and consistent with the extensive body of scientific evidence, that specific occurrences of specified diseases in firefighters have resulted from their employment. The introduction of a presumption would facilitate the recognition of firefighters' entitlements to workers' compensation benefits in relation to specified diseases.

Other jurisdictions, including the federal and Tasmanian workers' compensation schemes, regulated by the *Safety, Rehabilitation and Compensation Act 1988* (Cth) and *Workers Rehabilitation and Compensation Act 1988* (Tas) respectively, have adopted amendments introducing a rebuttable presumption in favour of firefighters diagnoses with a specified disease.

It is paramount that the introduction of such a presumption is founded on persuasive scientific evidence to ensure that the presumption is not seen to be arbitrary. To introduce a presumption on any other basis than persuasive scientific evidence could lead to proposals for presumptions in relation to incidence of conditions which are not so persuasively evidenced.

The proposed amendments prescribe that only fire officers employed under the *Fire and Emergency Service Act 1990* as a fire officer, members of rural fire brigades and volunteer firefighters and volunteer fire wardens are entitled to the benefit of the presumption.

We hold some concern that firefighters engaged prior to the commencement of the *Fire and Emergency Services Act 1990* may not have their period of service prior to the commencement of that Act recognised when calculating their length of service when determining if they are entitled to the benefit of the presumption.

We recommend that the proposed amendments be widened to ensure that all periods of service by fire officers and rural firefighters (including service with local fire boards prior to the passage of the *Fire and Emergency Services Act 1990*) is taken into account when determining firefighters' entitlement to the benefit of the presumption.

We are also aware that there are firefighters who are privately employed by companies, including facility service providers. We do not consider that there are any compelling policy arguments for excluding periods of private employment as a firefighter from being considered when calculating a firefighter's service period. Privately employed firefighters are exposed to the same occupational environments as fire officers as well as rural and volunteer firefighters.

While we consider that the proposed introduction of a rebuttable presumption is necessary, we do not consider that it is the only amendment required to be made to ensure that firefighters' entitlements to compensation are recognised.

We consider that specified diseases should be explicitly included within the definition of 'latent onset injury.' This amendment would remove any doubt that firefighters diagnosed with a specific disease that is terminal (likely to result in the workers' death within two years of diagnosis) are entitled to the latent onset terminal injury lump sums.

Further, we submit that an amendment should be made to Chapter3, Part 5 of the WCRA to introduce an obligation on employers of firefighters to provide evidence and records demonstrating a firefighter's length of service and attendance at incidents when an application for compensation in relation to a specified disease is made. This would make the determination process more efficient and lessen the burden on firefighters to prove their length of service (and consequent eligibility to receive the benefit of the presumption).

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Our firm commends the Palazczuk Government's introduction of the Bill and the amendments proposed in relation to the removal of a common law threshold, adequatet additional lump sum compensation for workers' who have lost their common law rights and the introduction of a rebuttable presumption in favour of firefighters diagnosed with specified diseases.

However, we urge the Committee to carefully consider the basis of the calculation of the additional lump sums, the removal of the whole of Division 1 of Chapter 14, Part 1 and further amendments to ensure that the workers' compensation entitlements of firefighters are fully recognised.

We authorise the publication of these submissions and would welcome the opportunity to meet with the committee to discuss the Bill currently being considered.

Yours faithfully

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Hall Payne Lawyers